NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 144 July 27, 2016

Pages 49139–49516

OFFICE OF THE FEDERAL REGISTER

1985

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FARM CREDIT ADMINISTRATION

12 CFR Parts 650, 651, 653, and 655

RIN 3052–AC89

Federal Agricultural Mortgage Corporation Governance; Standards of Conduct; Risk Management; and Disclosure and Reporting

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is finalizing new regulations related to the Federal Agricultural Mortgage Corporation's (Farmer Mac or Corporation) risk governance and making enhancements to existing disclosure and reporting requirements. The risk governance regulations require the Corporation to establish and maintain a board-level risk management committee and a risk officer, as well as risk management policies and internal controls. The changes to disclosure and reporting requirements remove repetitive reporting and allow for electronic filing of reports. We also finalize rules on the examination and enforcement authorities held by the FCA Office of Secondary Market Oversight (OSMO) over the Corporation.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. The FCA will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4364, TTY (703) 883–4056, or Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The purpose of this final rule is to:

- Enhance risk governance at the Corporation to further its long-term safety and soundness and mission achievement;
- Remove repetitious disclosure and reporting requirements, given the dual reporting responsibilities of the Corporation to the FCA and the Securities and Exchange Commission (SEC); and
- Clarify the examination and enforcement authority of FCA.

II. Background

Farmer Mac is a stockholder-owned, federally chartered instrumentality that is an institution of the Farm Credit System (System) and a Government-sponsored enterprise (GSE). The Corporation was established and chartered by the Agricultural Credit Act of 1987 (1987 Act)[1] to create a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, rural utility cooperative loans, and the guaranteed portions of USDA-guaranteed farm and rural development loans. Title VIII of the Farm Credit Act of 1971, as amended, (Act) governs the Corporation.

The Corporation has two classes of voting common stock: Class A and Class B. Class A voting common stock is owned by banks, insurance companies, and other financial institutions. Class B voting common stock is owned by System institutions. In addition, the Corporation has nonvoting common stock (Class C), the ownership of which is not restricted and is a means for the Corporation to raise capital. The Corporation may also issue nonvoting preferred stock.

The Corporation is regulated by FCA through the Office of Secondary Market Oversight (OSMO). Congress charged us to issue regulations to ensure mission compliance and the safety and soundness of the Corporation. When issuing regulations for the Corporation, the Act requires FCA to consider:

- The purpose for which Farmer Mac was created;
- The practices appropriate to the conduct of secondary markets in agricultural loans; and
- The reduced levels of risks associated with appropriately structured secondary market transactions.[2]

Farmer Mac, as a publicly traded company, is also subject to many of the governance requirements of Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley),[3] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[4] and Securities and Exchange Commission (SEC) disclosure regulations for publicly traded companies, all of which address reporting requirements and oversight for publicly held companies and financial institutions. Self-regulatory organizations (SROs), the New York Stock Exchange (NYSE) in the Corporation's case, have also issued requirements designed to enhance the accountability and transparency of corporate business operations.

As a GSE, the Corporation has a public policy purpose embedded in its corporate mission. One aspect of this public policy mission includes financial services to customer-stakeholders (institutions that lend to farmers, ranchers, rural homeowners, and rural utility cooperatives) and the resulting flow-through benefits to rural borrowers. Another key aspect is the protection of taxpayer-stakeholders because the risk that the Corporation accepts in the course of business exposes both investors (debt and equity holders) and taxpayers to potential loss. The taxpayer's exposure arises in part from the Corporation's authority to issue debt to the Department of the Treasury to cover guarantee losses under certain adverse circumstances.[5] Thus, an appropriately comprehensive approach to Board-level risk governance is essential to promote well-reasoned, risk-related decisions and promote public trust in the risk management of the Corporation.

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[1] Agricultural Credit Act of 1987 (Pub. L. 100–233, January 6, 1988).

[2] Section 8.11(a)(2) of the Act (12 U.S.C. 2279aa–11(a)(2)).

[3] Public Law 107–204, July 30, 2002.

[4] Public Law 111–203, 124 Stat. 1376, (H.R. 4173), July 21, 2010.

[5] According to the 1987 Act, Farmer Mac may, in certain circumstances, borrow up to $1.5 billion from the U.S. Treasury to ensure timely payment of any guarantee obligations of the corporation.

III. Comments and Our Responses: Section-by-Section Analysis

We issued a proposed rule to amend our standards of conduct, board governance, and reporting regulations for the Corporation on March 26, 2015 (80 FR 15931). The comment period for the proposed rule closed on June 24, 2015, and 77 comment letters were received. The comments submitted were from Farmer Mac, stockholders in Farmer Mac, a consultant to Farmer Mac,[6] an agent of Farmer Mac,[7] the Farm Credit Council (FCC) on behalf of its membership, and a member of the general public. Prior to the proposed rulemaking, we issued an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit opinions and suggestions from investors, stockholders, and other interested parties on ways to enhance our regulation of the Corporation's governance activities.[8]

The 77 comments submitted in response to the proposed rule made various suggestions for changing what we had proposed. Of these commenters, 69 limited their remarks and suggestions to part 651, "Standards of Conduct." Comments to the Standards of Conduct provisions involved both existing and proposed provisions.[9] These comments were significantly different from what was proposed and lacked uniformity in the type of changes sought.

As a GSE, the Corporation has certain strategic objectives that are public policy or "mission" oriented. Standards of conduct must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the Congressional purposes the Corporation was chartered to achieve. We believe standards of conduct to be among the most potentially complex and nuanced areas of corporate governance. For this reason, and because of the variety of comments received to this area of the proposed rule, we believe it prudent to address proposed changes and related comments on the more complex components of standards of conduct and board governance regulations in a separate rulemaking. Thus, we are not finalizing in this rulemaking many of the proposed changes to part 651, but instead intend to revisit changes to part 651 in a separate rulemaking.

Proposed changes to parts 650, 653, and 655 are finalized as proposed unless we say otherwise in this preamble. Included in finalized changes is the reorganization of our rules addressing the Corporation's operations through the addition of a new part 653 and organizational revisions to existing parts 650, 651, and 655. We make no changes to part 652 or reserved part 654.

A. FCA Oversight and Rulemaking [Part 650]

Existing part 650 contains general provisions, without subparts, on the supervision of the Corporation. We finalize adding a new subpart A, entitled "Regulation, examination and enforcement," as well as moving existing provisions into a new subpart B, entitled "Conservators, receivers, and liquidations." We finalize the redesignation of existing §§ 650.1 and 650.5 on appointing and removing receivers or conservators as new §§ 650.13 and 650.14, respectively. We make no other changes to these existing provisions.

We discuss comments received to this part and any changes to the appropriate sections below.

1. Part 650 Definitions [New § 650.1]

We finalize as proposed all definitions in new § 650.1. We received no comments objecting to the terms as proposed, but a stockholder-commenter requested we consolidate all proposed definitions for parts 650, 651, 653 and 655 into one section and asked for the term "agent" to be defined for part 650. We cannot accommodate either of these requests. We already maintain a global definition section for all our rules in part 619. Maintaining separate definition sections for use only in certain regulations eliminates confusion that may arise from placing terms having specific application for a secondary market along with terms applicable to Farm Credit banks and associations. We recognize that many of the terms for the definition sections we proposed in parts 650, 651, 652, and 655 are duplicative, but their location in the applicable sections avoids confusion with usage of the terms in other regulations. We also cannot accommodate the request to define in part 650 the term "agent." The term "agent" as used in part 650 has two different applications: (1) Agents of the Corporation; and (2) agents of FCA. A single definition would not capture the two separate applications of the term, particularly in regards to the existing rules on liquidation and receivership.

2. Regulatory Authority [New § 650.2]

We finalize the addition of new § 650.2, which provides clarity on the situation of the Corporation having FCA as its primary regulator, while also being subject to certain SEC regulatory disclosure requirements. The new § 650.2 identifies FCA as the "primary regulator" of the Corporation, possessing examination, enforcement, conservatorship, liquidation, and receivership authority over the Corporation. We finalize this section with one clarifying change made based on comments received. In § 650.2(b), we clarify that our supervisory authority to ensure the Corporation follows laws and regulations relates to compliance with applicable laws and regulations.

There were four commenters to this section: Farmer Mac, the FCC, and two stockholders in Farmer Mac. The FCC expressed strong support for the section clarifying that the Corporation is a GSE with a public mission. The stockholder-commenters also supported the section addressing the public policy purpose of the Corporation. Farmer Mac objected to the provisions on FCA's authority over it, contending that FCA has no authority over compliance with all laws and regulations. Farmer Mac explained that instead FCA is to ensure a dependable source of credit through its examination of the Corporation and regulation of its safe and sound conduct. Farmer Mac also asked us to either remove § 650.2(c) or specify the SEC regulations to which it is subject and exactly mirror language from the Act when describing our role. However, Farmer Mac added objections to our using the language of the Act to describe its relationship with the SEC. In that instance, Farmer Mac asked us to capture the "nuances of Farmer Mac's regulation by the SEC."[10]

We have clarified that the laws and regulations referenced are those applicable to the Corporation. We do not name those laws and regulations as they are subject to change. We also decline the request to include in the rule an analysis of the Corporation's relationship with both FCA and SEC, which is not the intent of the rule. The rule at § 650.2 is identifying us as the primary regulator of the Corporation. As explained in the proposed rule, the discussions Congress had surrounding passage of the Dodd-Frank Act recognized the long-standing situation where financial institutions are required to comply with various Federal financial laws and regulations issued and enforced by several banking regulators, although only one regulator is the primary regulator. We did modify the language of § 650.2(c) to add clarity and removed reference to the NYSE based on the comments received.

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[6] The consultant to Farmer Mac explained it had been hired by Farmer Mac to comment on the proposed rule.

[7] The agent of Farmer Mac explained it had been working as a consultant for Farmer Mac for over a year on specific projects.

[8] 79 FR 10426, February 25, 2014. The comment period for the ANPRM ended April 28, 2014, and seven comment letters were received.

[9] We last issued regulations on Farmer Mac Board governance and standards of conduct on March 1, 1994 (59 FR 9622).

[10] Farmer Mac explained it is not subject to complete regulation by SEC and, except for certain mortgage-backed securities, it is not subject to the 1933 Securities Act and must only file reports under the 1934 Securities Exchange Act. Farmer Mac comment letter, Appendix B, pages B–2 and B–27.

Farmer Mac asked that we add language in § 650.2(a) for USDA-guaranteed loans sold into the secondary market. The Corporation has established a secondary market for the guaranteed portions of USDA-Farm Service Agency guaranteed Farm Ownership and Operating Loans and USDA-Rural Development Guaranteed Business and Industry, Community Facility and Water and Environmental Program loans.[11] As noted by Farmer Mac, we are identifying the statutory purposes of the Corporation, we are not enumerating all of Farmer Mac's business programs. However, we have added language referencing USDA-guaranteed loans.[12]

3. Supervision and Enforcement [New § 650.3]

We finalize adding a new § 650.3 to incorporate into our regulations the supervision and enforcement authorities over the Corporation that are given us under the Act. Our enforcement authorities provide reasonable assurance that, among other things, the Corporation is adequately capitalized and operating safely. We finalize this section with clarifying changes made based on comments received.

There were six commenters to this section: Farmer Mac, the FCC, three stockholders in Farmer Mac, and an agent of Farmer Mac. Three commenters objected to agents being subject to FCA's enforcement authorities. Sections 5.25 and 5.26 of the Act specify that agents of a System institution are subject to our enforcement authorities and Farmer Mac is identified as a System institution in section 8.1(a)(2) of the Act. It is these provisions we relied upon when proposing the provision so we decline to make changes based on the comments. Two of the stockholder-commenters remarked that financial safety and soundness oversight should include making the Corporation subject to the Basel III capital standards. We decline to make changes to our rules in response to these comments. The existing rules addressing the Corporation's capital requirements already incorporate appropriate Basel capital standards, as well as analogous standards of other U.S. regulators.

Farmer Mac asked for the entire section identifying our enforcement authorities to be removed or that we directly quote the Act when identifying those authorities, using no further interpretation of the statutory language. We are directed by section 5.17(a)(9) of the Act to issue regulations necessary or appropriate for the implementation of the Act's provisions, which involves more than a recitation of the Act. Farmer Mac also asked that we provide a specific "exhaustive list" of our enforcement authorities. We likewise decline this request as our enumerated enforcement authorities may be amended by Congress or court interpretations. Further, we do not agree with Farmer Mac's interpretation of our authorities and decline to make changes to the rule based on its analysis. Farmer Mac also stated that our safety and soundness authority should not be viewed to include addressing board committees, director elections, or recordkeeping activities of the Corporation. Again, our oversight of the safe and sound operations of the Corporation necessitates that we consider the Corporation's board operations and the records of its decision-making analysis and financial condition.[13]

Farmer Mac objected to § 650.3(b) referencing when the Corporation engages in activities having "excessive risk," arguing the term is undefined. Farmer Mac stated that all of its activities involve risk and the provision would allow FCA to restrict these activities and substitute our judgment on how to run the Corporation. However, Farmer Mac acknowledged section 8.37 of the Act uses the term "excessive risk". Farmer Mac also objected to separating risk from its impact on capital and suggested objective, measureable standards be set for risk levels. In § 650.3(b), we clarify that risks having adverse impact to capital, which may lead to certain enforcement actions, generally refers to the adequacy of the Regulatory Capital level maintained by the Corporation.

4. Access to Records and Personnel [New § 650.4]

There were three comments objecting to the inclusion of agents in this section: Farmer Mac, a stockholder in Farmer Mac, and an agent of Farmer Mac. The agent who commented objected to classifying certain types of professional assistance received by the Corporation as an agency relationship, contending that FCA has no authority over certain types of agents (*e.g.* consultants, vendors), while the stockholder commented that the penalties were burdensome. Farmer Mac objected to being required to make its agents available to our examination staff. Farmer Mac contended that FCA does not have jurisdiction over all agents of the Corporation, as would be covered by the existing part 651 definition of "agent."

We finalize this section with one change based on comments received. In § 650.4(b), we replace the word "agents" with a more detailed explanation of the personnel required to be available to us when requested, which includes those engaged by the Corporation to participate in the business conducted by the Corporation. For example, during an examination it may be necessary for our exam staff to speak with the External Auditor. The Act specifies that directors, officers, employees, agents, and "other persons participating in the conduct of the affairs" [14] of a System institution are subject to our examination and enforcement authorities.[15] We relied on this language when developing the clarification for this final rule. We believe the clarifying language addresses the comments regarding certain "vendor-type" service providers. We also point out that the part 651 definition of "agent" is restricted to the provisions in part 651 and does not carryover to part 650. Also, the stockholder-commenter objecting to the "penalties" listed in this section spoke in error, as there are no "penalties" identified in § 651.4. Notwithstanding this, we believe this comment is adequately addressed in our earlier discussion of our enforcement authorities, which explains the "penalties" identified in § 650.3 are derived from the Act.

Farmer Mac also asked us to limit our access to Corporation documents to non-confidential items. In addition, Farmer Mac asked that there be a materiality and document age threshold controlling which documents and personnel we could access during our examination and enforcement activities. We decline Farmer Mac's suggestions regarding the scope of our access to corporate documents. As the safety and soundness regulator, we require full access to the Corporation's records.[16] In accessing these records, our activities are already covered by confidentiality provisions in Federal law.[17] Further, we view the act of our requesting the records or access to personnel as establishing the "materiality" to our oversight. We could not permit the Corporation to pre-screen records before release to us in order for Farmer Mac to, on its own, determine if a record is material or not for our purposes. Likewise, we cannot provide full oversight if we restrict our access to a finite period of time. It may be that the matter under review exceeds that period of time, or records within that time period make key reference to other, older records.

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[11] Under the Farmer Mac 2 program, Farmer Mac's subsidiary, Farmer Mac II LLC, buys guaranteed portions directly from lenders. The original lenders retain the unguaranteed portions of these loans and continue to service the entire loan.

[12] *Refer to* section 8.0(9) of the Act, defining "qualified loans".

[13] *See* section 8.11(a)(1)(B) of the Act authorizing OSMO "general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation".

[14] *See, for example,* section 5.32(a) of the Act.

[15] *Refer to* section 8.11(b)(3) of Act (12 U.S.C. 2279aa–11).

5. Reports of Examination and Criminal Referrals [New §§ 650.5 and 650.6]

We finalize as proposed the addition of new §§ 650.5 and 650.6, containing cross-citations to existing regulatory provisions regarding access to FCA Reports of Examination and the Corporation's obligation to make criminal referrals in certain circumstances. We received no comments to these two sections. We believe these cross-cites clarify the applicability of these provisions to the Corporation, and thereby facilitate compliance with them.

B. Farmer Mac Corporate Governance [Part 651]

Part 651 contains the existing corporate governance provisions for Farmer Mac, without subparts. As explained earlier in this preamble, this final rule does not include many of the proposed changes to part 651 since we intend to revisit part 651 in the future. Although we received many comments on the contents of part 651, no comments opposing the proposed organizational changes were made and, therefore, we finalize them as proposed. Specifically, we finalize the addition of a new subpart A, entitled "General," a new subpart B, entitled "Standards of Conduct," and a new subpart C, entitled "Board Governance." We also finalize as proposed the movement of the existing provisions of part 651 into the relevant subparts and adding new sections in reserve for future rulemaking. We discuss other final changes to part 651, and the comments received related to the changed provisions, in the appropriate sections below.

1. Part 651 Definitions [New Subpart A; Existing § 651.1]

We finalize the proposed revisions to our definitions in existing § 651.1, with two changes based on comments received. We are changing the term "potential conflict of interest" to "conflict of interest", while finalizing the definition as proposed. Two stockholder-commenters pointed out the definition covered both material and potential conflicts of interest and that we had no general definition for the term "conflict of interest." We agree with the commenters that the definition defined conflicts of interest in general so should be identified as such.

We are also modifying the definition for "reasonable person" by removing the phrase "based on societal requirements for the protection of the general interest." The proposed definition for the term "reasonable person" was based on general use of the term in conflict-of-interest proceedings and substantially resembled the legal meaning of the term. However, comments from Farmer Mac and a consultant of Farmer Mac objected to the phrase "societal requirements", arguing it was not part of the Model Business Code. One of these commenters also stated the term should be defined in a manner that directed attention to the Corporation's activities, not the public at large.

We do not agree with the commenters in this regard. As one commenter acknowledged, corporate governance allows consideration of the public impact of corporate behavior. In addition, the Corporation is a GSE with a public policy purpose and has directors appointed by the President of the United States to represent the public's interests in the operations of the Corporation. While we disagree with the reasons given by the commenters, we are removing the phrase "based on societal requirements for the protection of the general interest" from the definition for "reasonable person" as we believe the remaining language allows for addressing public concerns; specifically, the use of "average level of care." We recognize that these same two commenters also objected to using an average level of care measurement when defining "reasonable person", arguing it expanded the Corporation's activities to include consideration of the general public and not just stockholders. We agree that using an average level of care standard could involve consideration of the public, but unlike the commenters, we do not view that as a difficulty. We also do not agree with comments that the phrase "average level of care" in the definition for "reasonable person" under our conflict of interest rules expands the mission of the Corporation. Instead, we believe it emphasizes the scope of the Corporation's impact. As explained earlier, the Corporation has a statutory public policy purpose and public representatives on its board of directors. We believe retaining the "average level of care" language in the definition for "reasonable person" is appropriate.

Farmer Mac and stockholders in Farmer Mac commented on the term "material", asking that we delete the definition. Farmer Mac commented that the definition was appropriate for most of part 651, but stated concerns with how the term would work with securities regulations, which have a different definition for the term. Farmer Mac specified its concern was focused on proposed § 651.24. Stockholder-commenters remarked that the term "material" does not carry the same meaning or standard applied to other System institutions. These commenters made particular note of a separate proposed rulemaking affecting Farm Credit banks and associations, but not Farmer Mac.[18] These commenters argued there is no reason for a different standard among System institutions. As we are not finalizing in this rulemaking the proposed contents of § 651.24, we are not deleting the term "material" and note that the term is an existing term in our rules. We also do not consider it appropriate at this time to substitute the existing definition with one that has only been proposed in a separate rulemaking intended for Farm Credit banks and associations.

Farmer Mac asked that we remove the existing definition of "agent" from § 651.1, while three stockholder-commenters and an agent of Farmer Mac objected to agents being included in the rule at all, arguing that the existing definition was too broad in its application. Farmer Mac also stated the existing definition was too broad and exceeds the scope of FCA authority. We also received a call from a member of the general public asking about the definition and suggesting it may be problematic for dual compliance with both FCA and SEC requirements. The definition is an existing term that has been in our rules for over 20 years and we proposed no changes to it. Commenters offered no examples of difficulties that had been encountered in that time and did not express past compliance difficulties with the existing rule. As we proposed no changes to the existing term "agent," we decline to make any in this final rulemaking. However, we may reconsider the issue when revisiting part 651 in the future.

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[16] *See* section 8.11(b)(3) of Act (12 U.S.C. 2279aa–11(b)(3)).

[17] *Refer to* 5 U.S.C. 552(b)(8). *See also* 12 CFR 602.2.

[18] 79 FR 9649 (April 3, 2014).

A stockholder-commenter remarked that the term "officer" seemed to exclude risk officers and asked if that was intentional on our part. We reviewed the existing term "officer", to which we had proposed no changes, and agree that it could result in the risk officer not being included in the definition. However, that would depend on whether the Corporation makes the risk officer a vice president. If not, then the risk officer would be covered by the definition of "employee" instead of "officer."

2. Standards of Conduct [New Subpart B]

We finalize moving existing § 651.4 to new subpart B and redesignating it as new § 651.24. This section addresses director, officer, employee, and agent responsibilities. We finalize adding new §§ 651.21 and 651.25 under subpart B, but with no content, in reserve for future rulemaking.

a. Conflicts-of-Interest Policy [New § 651.22, Existing §§ 651.1(i) and 651.2]

We finalize the proposed movement of the existing § 651.2 contents, regarding conflict-of-interest policies, to new subpart B and redesignating it as new § 651.22. We are reserving § 651.2, with no content, for future rulemaking. Also, we finalize some amendments to the existing contents of redesignated § 651.22 and make two clarifying changes. Other proposed changes to the contents of this section are not being finalized in this rulemaking.

We finalize moving the list of imputed interests currently contained in the existing § 651.1(i) definition of a "potential conflict-of-interest" to this section (thereby removing it from the definition) as we received no comments on this proposed action. We also finalize the proposed revisions to the list of imputed interest, as they also received no comments: removing highly specific relationships such as "spouse" and "child" and replacing them with language to address all persons residing in the household or who are otherwise legal dependents. These changes are premised on the ever-evolving understanding of what is considered a family, as well as intended to address non-residential dependents whose activities and interests may create a conflict-of-interest for a director, officer, or employee. We make two clarifying changes to the list of imputed interest: A person's general partner refers to a business partner and employment arrangements include both current and prospective employment.

b. Conflicts-of-Interest Reporting and Disclosure [New § 651.23, Existing § 651.3]

We finalize moving existing § 651.3 to new subpart B and redesignating it as new § 651.23. This section addresses implementation of the conflict-of-interest policy. Farmer Mac offered comments on the existing language of this section, asking that the separate disclosure categories be removed. The rule currently requires Farmer Mac to provide its conflict of interest policy to its shareholders, investors, and potential investors when requested. Farmer Mac posed that these parties can obtain the policy from the Corporation's Web site or SEC filings so the provision should be removed. Farmer Mac did not state that this service could not continue to be provided, nor assert that the volume of requests was so high as to create a burden. We decline to remove this existing requirement as we continue to believe the Corporation should strive to accommodate requests from its shareholders, investors and, most especially, potential investors for copies of the policy.

c. Agents and Conflicts-of-Interest [Existing § 651.1 Through 651.4]

Farmer Mac, a stockholder in Farmer Mac, and an agent of Farmer Mac asked that we remove references to "agents" from the existing rule. Some of these commenters remarked that agents should not be treated the same as directors, officers, and employees. Others argued that monitoring agent conduct is burdensome, may deter agents from working for the Corporation, and was contrary to standard contractual agreements with agents. The agent stated that consultants and advisors were not intended by Congress to be subject to our regulatory or examination authority. The stockholder-commenter added that we should instead rely on the Corporation's existing practices regarding monitoring agent behavior.

Congress gave us certain enforcement authorities for agents of Farm Credit institutions.[19] We also note that agents have been a part of the existing conflict-of-interest rule for over 20 years. No commenter provided support to demonstrate that the Corporation has had difficulty in all those years obtaining the services of agents because of the existing standards of conduct regulations. We decline to remove agents from part 651 as part of this final rulemaking. However, we may reconsider the issue in the future when revisiting part 651.

3. Board Governance—Committees [New Subpart C]

We finalize adding new §§ 651.30, 651.35, and 651.40 under subpart C, but with no content, in reserve for future rulemaking. We also finalize adding a new § 651.50 on board committees. The new § 651.50 addresses the relationship between the entire board and its committees, requires certain committees, and establish minimum operational requirements for board committees (*e.g.*, charters, meeting minutes). We received comments from Farmer Mac and its consultant on this section and make four changes based on those comments: (1) We specify charter requirements apply to required committees; (2) we clarify that charters are approved by the full board; (3) we are not finalizing the requirement that each type of director serve on each committee; and (4) we clarify that an agenda may be informal, such as a list of issues under discussion.

a. Committee Charters [New § 651.50]

In general, Farmer Mac objected to any regulation of board committees. Farmer Mac asked that we change the requirement for all committees to be chartered, explaining often ad hoc committees are used in the Corporation's business and allowing committees to develop their own charters may be a transfer of board authority. The proposed provision stated that the Corporation's board is the body approving the charter, not the committee. However, we clarify in § 651.50(c) that the committees develop the charters, but those charters are not effective unless approved by action of the full board. In addition, we intended the provision to apply to standing committees of the Corporation, so have modified the rule to clearly limit the charter requirements to those committees required to exist by regulation (*i.e.* audit, risk, compensation and corporate governance committees). We also made conforming changes elsewhere in this section to clarify that the committee provisions apply to these same "required" committees.

Both commenters objected to the provision in § 651.50(a) that use of a board committee does not relieve board members of their legal responsibilities. The commenters stated that delegations to committees are permitted and the provision was unnecessary. In paragraph (a) of new § 651.50, we proposed regulatory language clarifying that the entire board remains accountable for committee actions. In directing the Corporation, the board of directors may rely on reports from board committees, but doing so does not relieve the board of final responsibility. While activities and tasks may be delegated to a committee, the fact that a committee handles some board responsibilities does not relieve the board of its legal liabilities for such, nor does it relieve the board of the ultimate responsibility for those activities or tasks. Therefore, we decline to make changes to § 651.50(a).

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[19] *See* sections 5.25, 5.26, and 5.32 of the Act. *See also* sections 5.17(a)(9) and (10), 5.19 and 8.11 of the Act.

b. Committee Composition

We received comments from Farmer Mac and its consultant on § 651.50, both objecting to the proposed requirement that each committee have representation from the three types of directors serving on the Corporation board (Class A elected, Class B elected, and appointed). The commenters stated the provision may result in conflicts of interest, unqualified directors serving on committees, and create division on the board. Commenters offered no support for the named concerns, but we consider this issue to be among those we plan to review when we revisit part 651 in the future. As a result, we are not finalizing in § 651.50(c) the requirement that each committee have representation from the three types of directors serving on the Corporation board. In conformance with this, we also remove the proposed paragraph designations in paragraph (c).

Farmer Mac and its consultant also objected to limiting the number of committees a director may chair. We proposed in § 651.50(c) that no director may serve as chair of more than one committee. The commenters stated that this was an unnecessary restriction. We decline to change this limitation based on comments received. We believe this limitation is necessary, as it reasonably distributes responsibilities among individual members of the board. We also believe that too great a concentration of responsibilities among too few directors would detract from the board's overall effectiveness and may create potential, and unnecessary, safety and soundness concerns.

c. Committee Agendas

Farmer Mac objected to the § 651.50(d) requirement that board committees have agendas for their meetings. Farmer Mac explained that some ad hoc meetings occur with no prior planning, making development of an agenda impossible. We appreciate that a situation like the one described may occur and have modified the rule to allow for an equivalent list of issues under discussion to be part of the meeting minutes in lieu of an agenda.

C. Risk Management [Part 653, No Subparts]

We finalize adding a part 653, with no subparts, to address risk management within the Corporation. In doing so, we remove proposed references to "risk tolerance" throughout part 653, while retaining references to risk-appetite, as we determined the term "risk-appetite" encompassed risk tolerance consideration. We received comments from Farmer Mac, stockholders of Farmer Mac, and the FCC to this part and discuss them, and any changes, in the appropriate sections below.

1. General [New § 653.2]

We received comments from Farmer Mac, the FCC, and stockholders in Farmer Mac on new § 650.2, which addresses general board-level risk management matters. Farmer Mac expressed agreement with requiring its board to be actively involved in the Corporation's risk framework, but considered it unreasonable to expect it to "ensure" all risk-taking is safe and sound. Farmer Mac asked that it be allowed to address its "risk appetite" by areas, such as liquidity risk or operational risk, instead of one unified assessment, explaining that the risk committee's role represents the intersection of oversight of all risk areas. We generally expect functional area specialists (*e.g.*, finance committee, credit committee, marketing committee) to evaluate risk in terms of the specialized responsibilities of those operational areas. While we view that as generally appropriate for day-to-day risk management, it is nevertheless important that the entire board consider risks from all areas when conducting its enterprise-wide monitoring and oversight. For that reason, the risk committee is expected to evaluate risks from the level of the Corporation, rather than the functional area. To borrow a description from the Treadway Commission,[20] we believe the risk committee aims to strike an optimal balance between growth and return goals while attempting to optimize deployment of resources toward the entity's objectives.

In the same way, we view the risk officer as playing a role that represents the intersection of risks across functional area managers. We view the risk officer's role to involve monitoring the balance of risk across all functional areas and, as needed, recommending adjustments to re-balance the enterprise-wide risk profile in a manner consistent with the board-approved risk appetite. This role does not eliminate risk management responsibility from other members of the Corporation's management team. If a functional area manager knows that his or her performance will be evaluated on the basis of the productivity of that area, the manager's focus on that area's performance could become out of proportion to the impact of that effort on the Corporation's enterprise-wide risk position. The risk officer would then serve as a means of alerting senior management and the board of the potential impact that functional area managers' activities and positions may have on the Corporation at the enterprise-wide level. This should enable appropriate actions and strategies to be evaluated and taken when functional area risk taking exceeds the overall risk appetite of the board.

The FCC and two stockholder-commenters agreed with requiring the Corporation's board to be actively involved in the Corporation's risk framework, but wanted it expanded to include capital considerations. These stockholder-commenters added that the requirement was not preventative enough as the Corporation's board should be required to approve risk-bearing capacity and consider the Corporation's public policy mission as well as capital adequacy. A third stockholder-commenter remarked that the part 653 requirements were not unreasonable, but better suited to non-regulatory guidance. This stockholder-commenter explained that the science of risk management is an emerging area, subject to rapid changes, so placing risk management requirements within a rule may hinder the Corporation's ability to keep pace with best practices in risk management.

We are replacing the term "ensure" with the phrase "provide reasonable assurance" when discussing risk-taking activities in response to comments. We also add as a clarifying change that the requirement to monitor risk activities is expected to be on a regular basis. We make no other changes to new § 653.2. While we appreciate the comment regarding the evolving nature of risk management, we believe it appropriate to establish an essential risk management structure within regulation and then supplement the rules with the suggested informal guidance if necessary. We also make no changes in response to comments asking that part 653 address risks associated with capital. We already address risks to capital in § 652.61, where we require the Corporation's board to approve the annual capital plan, which must comply with the board's risk appetite.

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[20] "Enterprise Risk Management—Integrated Framework", Executive Summary, Committee of Sponsoring Organizations of the Treadway Commission, September 2004.

2. Risk Management [New § 653.3]

We finalize, with changes, new § 650.3, which contains the minimum required risk management program activities of the Corporation. We received comments to this section from Farmer Mac, the FCC, and three Farmer Mac stockholders. We discuss the comments, and any changes, in the appropriate sections below.

a. Risk Management Program [New § 653.3(a)]

We are making the following changes to new § 653.3(a), which requires the Corporation's board of directors to have a risk management program:

- Replacing the phrase "in effect at all times" in the introductory language of paragraph (a) with the more measurable standard "establish, maintain, and periodically update" the risk management program;
- Removing the language "addresses the Corporation's exposure to credit, market, liquidity, business, and operational risks" in paragraph (a)(3) as it is redundant of language contained § 653.3(b)(2);
- Adding language in paragraph (a) to recognize that implementation of the risk management program may be handled by senior management; and
- Adding language to clarify that the list of requirements in new § 653.3(a) are the minimum.

In furtherance of these clarifications, we remove the proposed paragraph (a)(4) requirement that the risk management policy specify the independence of those carrying-out the program.

We received comments to new § 650.3(a) from the FCC agreeing with the provision, but expressing concern that there was insufficient distinction between risks in the System and risks faced by the Corporation. The FCC asked that "casual" references linking the Corporation to the System be eliminated and that we specify the Corporation is a separate GSE from the System. In response, we clarify in this preamble that the Corporation is an institution of the Farm Credit System, but is not liable for any debt or obligation of any other System institution, and the other System institutions have no liability for Farmer Mac's debt. Also, Farmer Mac is organized as an investor-owned corporation, not a member-owned cooperative as are other System institutions, and the Farm Credit System Insurance Corporation does not insure Farmer Mac's securities.

Farmer Mac remarked that the board does not often involve itself in day-to-day risk decisions: That is more properly handled by senior management. As mentioned above, we have made clarifying changes to recognize that daily implementation of the risk management program may reside with senior management. Two stockholder-commenters stated agreement with the risk management provisions, but asked that we expand them to include risk-bearing capacity and require management of the Corporation's capital to be consistent with Basel III. We have previously responded to their comment. These commenters also asked that OSMO provide further guidance to the Corporation on specific risk tolerance measures and for OSMO to closely monitor the program to ensure it is implemented in an effective manner. As noted, FCA may provide for the guidance on risk management as part of its oversight of this area. These stockholder-commenters objected to the § 653.3(a) provision requiring risk management to include consideration of compensation practices and asked for the provision to be removed. We believe the incentive structures related to functional area managers' performance and risk-taking activities, referred to in our earlier response to comments on § 653.2, includes incentive compensation policies and practices and that the Corporation's enterprise-wide risk management oversight would be incomplete without such consideration.

b. Risk Committee [New § 653.3(b)]

We received comments from Farmer Mac and two Farmer Mac stockholders on new § 653.3(b), which addresses the responsibilities of the risk committee. The stockholder-commenters agreed in general with the provisions, but asked that they more closely resemble the requirements for other GSEs, including System institutions. We note that we do not currently require other System institutions to have risk committees and so cannot accommodate the request of those commenters asking for consistency among System institutions. Also, we note that the Corporation is of a different structure than other System institutions, necessitating some different risk management aspects. However, we did consider the provisions of the recent risk management rulemaking by the Federal Housing Finance Agency (FHFA).[21]

Farmer Mac asked that we use the same experience requirement for the risk committee as is used for the risk officer since it could be difficult to ensure a risk expert is always elected to the board. For the same reason, Farmer Mac asked that we change the committee responsibilities to a level of understanding of risk rather than possession of expertise. We agree and substitute in new § 653.3(b)(1) the phrase "an understanding of" and remove the proposed "expertise" requirement when talking about the requirement that the risk committee have at least one member who is familiar with risk management. We also make changes in new § 653.3(b) to replace the requirement that the risk committee be responsible for the oversight of the risk management program, as that responsibility rightfully belongs to the entire Corporation board. In its place, we require the risk committee to assist the Corporation board in overseeing the risk management program. We believe it is essential that the tone of the Corporation's risk culture and its procedures for risk decision-making be set by the Board, even when based on management's recommendations. Further, the board of directors play a critical role in the ongoing oversight of, and cohesive implementation of, operational strategies and plans that conform to established risk appetites.

We also replaced the proposed requirement in paragraph (b)(2)(i) that the risk committee oversee and document risk management activities with a requirement to periodically assess management's implementation of the risk management program. Similarly, we remove the proposed review requirement of paragraph (b)(2)(ii) and clarify that risk committee recommendations relate to changes to the risk management program. We also clarify in paragraph (b)(2)(iii) that the risk committee's receipt of reports from Corporation staff is not limited to the risk officer. We recognize that any personnel responsible for implementing the risk management program may be tasked by Farmer Mac with offering reports to the risk committee.

We are making technical changes in new § 653.3(b) to align language with that contained in other sections (*e.g.*, replacing "risk management practices" with "risk management program", replacing "risk profile" with "risk appetite"). We also remove language redundant of that contained in new

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[21] 80 FR 72327, December 21, 2015.

§ 651.50 regarding formation of the risk committee. As referenced in the discussion of § 651.50 (preamble section III.B.3.), we are finalizing the requirement that the Corporation have a risk management committee so do not need to state in § 653.3(b) that the risk committee must be formed.

c. Management of Risk [New § 653.3(c)]

We received comments from Farmer Mac and two Farmer Mac stockholders on new § 653.3(c), which requires the Corporation to have a risk officer. The stockholder-commenters agreed in general with the need for a risk officer, but stated that FCA should not require it as FCA should not make staffing decisions within a System institution. These commenters also contended that requiring a risk officer offers no assurance, from a safety and soundness perspective, of compliance with risk management policies. The stockholder-commenters asked that the entire paragraph be removed. Farmer Mac commented on the use of the term "experience" versus "expertise", asking for similar use for both the risk committee and the risk officer. Farmer Mac explained that using different terms implied different expectations regarding the background of the risk officer versus the risk committee expert. Farmer Mac also asked that the standard be an understanding of risk issues and not direct experience in risk issues to facilitate recruitment. Finally, Farmer Mac asked for a 1-year phase in to fill the position.

We earlier addressed most of Farmer Mac's comment regarding the level of expertise required in § 653.3(b). In response to remaining comments, we are changing the name of paragraph (c) from "Risk Officer" to "Management of risk" and making conforming changes to reference a "risk officer, however styled" so as to encompass other personnel responsible for implementing the risk management program. We also remove specific reporting requirements to "the chief executive officer and board risk committee" in new § 653.3(c)(4) and (5) to recognize that Farmer Mac will exercise its own discretion in designing a risk management position(s). We decline to reduce the level of experience for risk officers to a mere understanding of risk and have retained the requirement for experience in risk management. We are not delaying the effective date of this rule as requested by Farmer Mac to facilitate the Corporation having a risk officer in place before the rule is effective. Should the Corporation encounter difficulties in having a risk officer in place after this rule is effective, Farmer Mac should contact the Director of OSMO.

3. Internal Controls [New § 653.4]

We received comments on new § 653.4 from Farmer Mac and two Farmer Mac stockholders. Farmer Mac asked that we remove the entire section on internal controls, stating the Corporation's internal control activities under SEC regulations are sufficient. Farmer Mac then asked us to mirror SEC regulation if we retained the provision or make the following changes to it: remove the term "ensure", incorporate more flexibility, and avoid expanding the role of the directors. Farmer Mac also asked for clarification on paragraph (b)(6) regarding information reported to the board of directors, as it considered the provision to be vague.

We decline the request to remove the entire section requiring internal controls. We continue to believe that the Corporation's board oversight of internal controls is a critical component of its responsibility for monitoring corporate activities and providing reasonable assurances that the controls will prevent excessive risk taking, mitigate operational risks, and minimize the potential for unsafe and unsound activities. The corporate environment is influenced by management's philosophy, operating style, integrity, ethical values, and commitment to competence. If this foundation is strong, if the corporate environment is positive, the overall system of internal controls will be more effective. Further, a sound system of comprehensive and integrated internal controls is vital to the operations of any organization and especially those whose business is taking financial risk. In the more than two decades since the Corporation was chartered, business and operational environments have become significantly more complex and technology-driven. A system of internal controls should dynamically respond to such changes in complexity—not just in business unit operations but also in compliance with increasingly complex laws, regulations, and industry standards. We also decline to rely solely on the internal control assessment the Corporation prepares for the SEC since that assessment is targeted at financial reporting issues, pursuant to provisions in the Sarbanes-Oxley Act.[22] As a safety and soundness regulator, our interest in internal controls extends beyond preparation of financial report. While we believe effective financial controls reduce the risk of asset loss and help ensure that financial information is complete and accurate, and agree that financial statements need to be reliable and comply with laws and regulations, we also believe safety and soundness internal controls extend to the operations, programs, and resources of the Corporation. We are, however, making some changes based on the comments. We change paragraph (a) to clarify the expected internal controls are safety and soundness controls over the Corporation's operations, programs, and resources. We also remove the "ensure" language from paragraph (a), to which a commenter objected. Also, we are substituting the requirement in paragraph (b)(6) for "transparency" with the Corporation's board in response to a comment. We instead require that internal controls address "the completeness and quality" of information shared with the Corporation's board.

Farmer Mac also asserted that requiring it to have internal controls would deviate from what FHFA requires of the only other secondary market GSEs (Fannie Mae and Freddie Mac).[23] We believe that the current differences between the operating structures of the housing GSEs and Farmer Mac, in particular the conservatorships of the housing GSEs, makes comparison of their regulatory structures less useful. We believe internal controls are important for Farmer Mac regardless of whether another regulator adopted them for the housing GSEs. The overall purpose of an internal controls system is to help an entity achieve its mission and accomplish certain goals and objectives. An effective internal control system should promote orderly, economical, efficient and effective operations; safeguard resources against loss due to waste, abuse, mismanagement, errors and fraud; promote adherence to statutes, regulations, and operating procedures; as well as develop and maintain reliable financial and management data (and accurately report that data in a timely manner), all of which can help protect the Corporation's safe and sound operation and its reputation.

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[22] The Sarbanes-Oxley Act stressed the importance of public companies maintaining internal controls when it comes to their financial reporting by requiring public companies to include details on the company's financial internal controls inside of their annual reports. Also, the SEC requires filers to include an attestation of "internal controls over financial reporting" in annual reports.

[23] *See* footnote 15, Appendix B, of the Farmer Mac comment letter to the proposed rulemaking. *See also*, 12 CFR 1236, Appendix A, "Prudential Management and Operations Standard," containing some FHFA internal controls requirements for the secondary market housing GSEs (*e.g.*, "Standard 1—Internal Controls and Information Systems").

We had proposed in paragraphs (c) and (d) that the Corporation establish a monitoring system for its internal controls and to report to us on the effectiveness of those controls. Stockholder-commenters objected to the requirement for annual reports on internal controls, explaining such reports would be burdensome and could reduce the attention given the issue during FCA examinations. The commenters instead stated that FCA should rely primarily on its examination authority for review of internal controls. We make changes to paragraphs (c) and (d) to address the comments objecting to annual reports on internal controls, but do so in a manner that also satisfies the underlying purpose of proposing an annual report on the effectiveness of internal controls. We are removing paragraph (d), which required the annual report to OSMO, in its entirety. In connection with this, we enhance the provision in paragraph (c) to require the monitoring of internal controls to include an identification and documentation of weaknesses in internal controls. We continue to believe the Corporation's internal control system needs to be monitored to assess whether controls are effective and operating as intended. On-going monitoring occurs through routine managerial activities such as supervision, reconciliations, checklists, comparisons, performance evaluations, and status reports. Monitoring may also occur through separate internal evaluations (*e.g.*, internal audits/reviews) or from use of external sources (*e.g.*, comparison to peer groups or industry standards, surveys, etc.). Deficiencies found during monitoring should then be documented and reported to those responsible for the function, with serious deficiencies being reported to top management or the board. To ensure this monitoring occurs, the rule requires the Corporation to document the process used to identify and resolve weaknesses in its internal controls, as well as document what weaknesses were found. This change, along with the internal controls over financial reporting made to SEC, should provide the necessary source documents for our examination of the Corporation's internal controls, similar to what would have resulted from the proposed annual report to OSMO.

D. Disclosure and Reporting [Part 655]

Part 655 contains the existing financial disclosure and reporting provisions for the Corporation. We received comments to part 655 from Farmer Mac, an agent of Farmer Mac, and a Farmer Mac stockholder. There were no comments opposing the proposed organizational changes and, therefore, we finalize them as proposed. We also finalize as proposed the movement of existing provisions into the relevant subparts.

We discuss final changes to part 655, and the related comments received, in the appropriate sections below.

1. Definitions [New Subpart A: New § 655.1]

We received a comment from Farmer Mac on the definition for "material" in part 655, asking us to remove the definition or restate that used by the SEC. We proposed defining "material" as information required when "there is a substantial likelihood that a reasonable person would attach importance in making investor decisions or determining the financial condition of the Corporation." We decline Farmer Mac's request as it did not argue that the term "material," as used in part 655, presented any conflict with SEC reporting rules.[24] Rather, we note that, like the SEC, our rule interprets the term in a manner similar to the Financial Accounting Standards Board (FASB) Concepts Statement No. 2 explanation of "materiality."[25] FASB, in turn, relied on the U.S. Supreme Court explanation that a fact is material under Federal securities laws if there is a "substantial likelihood" the fact would be "viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[26] We also note that our rule substantially resembles the SEC Rule 405 definition,[27] with adjustments made for financial safety and soundness considerations. We finalize the term "material" and its definition as proposed. However, we are not finalizing adding the term "report" and its accompanying definition to new § 651.1 as the term is sufficiently explained in the relevant provisions of the rule.

2. Prohibitions [Proposed New § 655.2]

We received comments on new § 655.2 from Farmer Mac and an agent of Farmer Mac. Farmer Mac asked that all references to "agents" be removed and that the provision include a materiality standard so as to limit FCA actions. Farmer Mac asserted that FCA has no authority to regulate non-System persons or entities, suggesting FCA limit itself to imposing an obligation on the Corporation to monitor its agents. Farmer Mac again stated that FCA should not intrude into areas under SEC jurisdiction. Farmer Mac also asked that we defer to the SEC for determining compliance, specifically mentioning the SEC rules on omissions and misstatements in reports filed with the SEC. The agent to Farmer Mac stated the regulation of agents was intrusive and burdensome, adding that Congress did not intend consultants and advisors to be subject to FCA authority.

We proposed new § 655.2 to prohibit directors, officers, employees, or agents of the Corporation from making misleading, inaccurate, or incomplete part 655 disclosures. The provision would have covered reports and disclosures made to FCA, stockholders of Farmer Mac, and the general public. Contrary to the remarks of some commenters, the provision did not assert direct regulatory authority over the general actions of an agent of Farmer Mac. Instead, the provision would have required Farmer Mac to control its agents, or issue corrections to disclosures made by the same if those disclosures were determined to be misleading, inaccurate, or incomplete. As explained in section 8.3(c)(4) of the Act, Farmer Mac has a statutory duty to take necessary precautions, including obtaining surety bonds, against any losses caused by the acts of its agents. Further, FCA has statutory authority to issue cease-and-desist orders to agents of the Corporation in appropriate circumstances. In addition, we reject the argument of Farmer Mac that misleading, inaccurate, or incomplete disclosures are the exclusive jurisdiction of the SEC. Not every report or disclosure made by Farmer Mac is in response to a requirement of the SEC, particularly those we require under our rules in part 655. Rather, activities of the Corporation extend beyond registered securities issued or guaranteed by Farmer Mac, and we have long had regulations addressing Farmer Mac disclosures related to securities not registered under the Securities Act of 1933. All this notwithstanding, in response to the concerns expressed by commenters regarding dual compliance with SEC regulations, we are not finalizing the contents of § 655.2 at this time.

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[24] *See* SEC Staff Accounting Bulletin: No. 99—Materiality, 17 CFR part 211 (August 12, 1999), explaining the meaning of "material" as "A matter is 'material' if there is a substantial likelihood that a reasonable person would consider it important."

[25] FASB, Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information, 132 (1980). In this bulletin, FASB explained the concept of "materiality" as "The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item."

[26] *See TSC Industries* v. *Northway, Inc.*, 426 U.S. 438, 449–450 (1976), where the court noted that determining materiality required "delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him . . .". *See also Basic, Inc.* v. *Levinson*, 485 U.S. 224 (1988).

[27] 17 CFR 230.405.

3. Reports of Condition [New Subpart B: Existing § 655.1; New §§ 655.10 and 655.15]

Our existing rule requires the Corporation to make annual reports to its shareholders, and we had proposed enhancements to this existing requirement. The enhancement included adding quarterly reports, increasing the information in the reports, reducing distribution timeframes, and requiring the reports to be signed and certified as accurate. We received comments on these proposed changes from Farmer Mac and a Farmer Mac stockholder. The stockholder-commenter only remarked that we should remove references to "EDGAR", the SEC Web site portal, as the name of the portal may change. We agree and have removed all references to "EDGAR" in part 655.

Farmer Mac objected to our rules containing any different reporting or disclosure requirements than those required by the SEC. Farmer Mac stated reporting and disclosures are the jurisdiction of the SEC and FCA should reconsider any regulation of the matter. We reject the argument of Farmer Mac that financial reports and disclosures are the exclusive jurisdiction of the SEC and remind the Corporation that we have long had regulations addressing financial reports and disclosures made by the Corporation. Further, FCA may require disclosure necessary to the safety and soundness of the Corporation.[28] In particular, we may require disclosures suitable to the purpose for which Farmer Mac was created, to follow disclosure practices appropriate to secondary market activities, and to aid in reducing risks in secondary market transactions.[29] We also point out that SEC rules do not prohibit its filers from making financial reports to other Federal agencies.[30]

While we understand Farmer Mac's desire to only concern itself with one unified set of reporting and disclosure requirements, we cannot uniformly adopt SEC reporting and disclosure requirements. As explained in the proposed rulemaking, SEC requires certain reporting and disclosures to satisfy its role in ensuring listed companies provide sufficient information to the investing public. We, on the other hand, concern ourselves with ensuring disclosures and report made by the Corporation address safety and soundness concerns, which include all the activities of the Corporation. Where we can in this rule, we have allowed Farmer Mac to use SEC filings in satisfaction of our requirements. However, the SEC is a separate agency and can change its reporting and disclosure requirements without consulting FCA. For this reason, we limit the extent that SEC filing requirements may also satisfy our requirements and do so in a manner to avoid conflict with SEC requirements and unnecessary duplication of effort by Farmer Mac.

a. Annual Reports

Our existing rule requires the Corporation to make annual reports to its shareholders consistent with shareholder reports required by the SEC, and to submit copies of such to us. We note that the Corporation must also file annual and quarterly reports with the SEC (10Q and 10K, respectively), which may include additional information not part of the annual report to shareholders.[31] Farmer Mac asked us to mirror SEC annual reporting requirements. Doing so would include removing the proposed quarterly reporting to shareholders.[32] We finalize the proposed language that the annual reports to shareholders must be either equivalent in content to that required under the Securities Act or as we so instruct. However, we are not finalizing the proposed requirement in § 655.10(a) that the Corporation make quarterly shareholder reports. Farmer Mac also asked that we remove the requirement to file any paper copies of reports with OSMO. We decline this request for reasons discussed in the proposed rulemaking preamble.

b. Certification of Reports

Farmer Mac said that there was no need for requiring signatures and certifications on reports as the SEC already addresses how reports are to be signed and certified. Farmer Mac also asked that we define "financially accurate" as used in new § 655.10(b), explaining it is not a term used in the SEC-required certification of reports. We finalize with changes the signature and certification requirements of new § 655.10(b). Our proposed certification did not conflict with SEC laws or regulations, but may have caused compliance issues with SEC instructions. SEC rules §§ 240.13a–14 and 240.15d–14 require certification of quarterly and annual reports filed with them, but SEC instructions for completing these certifications prohibit filers from making changes to the certification language provided in the SEC rules. Our proposed certification requirements captured most of the same information as the SEC certifications, without giving specific language that had to be used. To address the commenter's concern regarding compliance with both the SEC and FCA, we are changing our certification requirements to require the use of SEC certifications.[33] We also clarify that the requirements of § 655.10(b) apply to reports issued under new subpart B of part 655.

c. Distribution Deadlines

Farmer Mac objected to reducing distribution deadlines to 90 days, asking that we keep the current 120-day deadline so as to provide it greater flexibility. Farmer Mac added that the proposed 90-day timeframe "deviates from SEC rules," but does not name the SEC rules being referenced. Farmer Mac also asserted the shorter timeframe could increase compliance burden.

Absent a citation to the SEC rules, we do not see where the number of days FCA proposed created any compliance problems with SEC requirements. The SEC has a three-tiered deadline for annual reports filed with them that is based on the size of the filer: 60 days after fiscal year end for large accelerated filers, 75 days after fiscal year end for regular accelerated filers, and 90 days after fiscal year end for nonaccelerated filers.[34] Our proposed 90-day deadline did not conflict with any of these timeframes. The separate "annual report to shareholders" [35] required by the SEC provides that a registered company must distribute the company's annual report to shareholders at least 40 days before the company holds its annual meeting or elections.[36] Again, our proposed 90-day deadline did not conflict with this timeframe as the Corporation is not legally required to hold its annual meeting on any specific date.

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[28] Sections 5.17(a)(8) and 8.11 of the Act (12 U.S.C. 2252(a)(8) and 2279aa–11).

[29] Section 8.11(a)(1) and (2) of the Act (12 U.S.C. 2279aa–11).

[30] *Refer to* 17 CFR 240.12b–33.

[31] The SEC requires registered entities to file an annual report on Form 10–K, which may contain more detailed information about the company's financial condition than the annual report to shareholders. The annual report on Form 10–K provides a comprehensive overview of the company's business and financial condition and includes audited financial statements. Although similarly named, the annual report on Form 10–K is distinct from the "annual report to shareholders," which a company must send to its shareholders when it holds an annual meeting to elect directors. *www.sec.gov/answers/form10k.htm.*

[32] Currently, the SEC does not require registrants to issue a quarterly report to shareholders. However, the issuance of such a report might be required by the listing standards of a national securities exchange or association. In addition, communications about quarterly results are subject to Regulation FD, *Fair Disclosure,* as well as Form 8–K disclosure requirements.

[33] SEC certifications are designed to be consistent with the certification requirements of section 302 of the Sarbanes-Oxley Act, which is intended to improve the quality of public financial disclosures that a company provides in its periodic reports to investors.

Our existing rule requires distribution of annual reports to shareholders within 120 days of the fiscal year end (*i.e.* April of each year). The SEC ties distribution of shareholder reports to the annual meeting date (or election date) and reports to the SEC are tied to fiscal year end. We use fiscal year end for both actions. This means to comply with both the SEC and FCA deadlines the Corporation currently must distribute its report to shareholders within 120 days of fiscal year end and may not hold its annual meeting (or elections) until 40 days after the report is distributed (approximately 160 days or June 9th of each year). We proposed reducing our deadline to 90 days, which would result in the Corporation being required to hold its annual meeting (and elections) no earlier than May 10th of each year (approximately 120 days from fiscal year end). As there is no compliance issue with SEC rules, we reject the request of Farmer Mac to follow the SEC in this regard. We prefer a date certain under which the Corporation must distribute its annual report to shareholders. However, we have restored the existing 120-day deadline for distribution of the annual report to shareholders. We continue to believe the Corporation is more than capable of issuing the report sooner, but agree that the additional time is beneficial to the director nomination process (due to the report's connection to holding annual meetings/elections under SEC rules).

d. Interim Reports, Proxy Statements, and Notices

We proposed in § 655.15 that the Corporation provide us copies of interim reports (*e.g.,* 8–K), proxy statements, and notices sent to SEC. We also proposed that this same information be posted on the Corporation's Web site for public viewing, but that links to the SEC electronic filings may be used to satisfy this requirement. Farmer Mac commented that these requirements were an unjustified regulatory burden. Farmer Mac then asked that we clarify the scope of notices, interim reports, and proxy statements required to be sent to OSMO under § 655.15(a). Farmer Mac also asked that we remove the requirement to post on its Web site these same notices, interim reports, and proxy statements. Farmer Mac stated concern with the public posting requirement since these filings include all papers and documents made part of the filing, contending confidential communication with the SEC may be made public.

We decline to remove the § 655.15(a) requirement to provide these complete filings to OSMO as we continue to believe it is essential that communications between the Corporation and OSMO, its primary regulator, include the substantive communications the Corporation has with the SEC. We also fail to see how providing us copies of reports and filings already being prepared is a burden on the Corporation. We have clarified in § 655.15(b) that the public Web site postings may be limited to the public aspects of the notices, interim reports, and proxy statements.

4. Reports Related to Securities Activities [New Subpart C: Existing § 655.50; New § 655.20]

Farmer Mac objected to being required in § 655.20 to send paper copies to us of reports on unregistered securities activities. We have removed the requirement for both electronic and paper copies, replacing it with a requirement for either a paper or electronic copy, whichever is most conducive to transmitting the information. We also added language to clarify the reports are to be sent to the Director of OSMO.

Farmer Mac requested we clarify the types of documents covered by § 655.20 and whether daily transactions (*e.g.,* issuance of unregistered debt securities) needed to be filed with us. Farmer Mac explained that many documents and daily activities could be covered by the rule under some interpretations. If so, the burden of providing that information to us would be significantly increased. As we made little change to existing requirements in this area, we question the assertion that the rule could be misinterpreted or is a burden on Farmer Mac. Farmer Mac has made reports to us on its activities regarding securities not registered under the Securities Act under this regulatory requirement since 1993. As such, Farmer Mac should continue its current practices addressing daily activities for filings made under this requirement, unless we later advise them otherwise. The Corporation at a minimum must make special filings with us regarding those items specifically listed in the rule. We encourage the Corporation to contact us when questions arise as to whether a specific securities action requires a filing under § 655.20.

Farmer Mac requested we update existing terminology in § 655.20(b)(2) regarding securities purchased by the Corporation under section 8.6(e) of the Act. We agree that the specific citation to the Act needed to be updated to reference the correct paragraph of section 8.6.[37] The current reference predates Congress moving the relevant provision from section 8.6(g) to section 8.6(e) of the Act.[38] We also revise the "pooling and servicing agreements" terminology as requested by Farmer Mac. The existing rule used this phrase to reference those documents employed in the exercise of the Corporation's authority to purchase and hold securities that are backed by pools of qualified loans (which loans are secured by a first lien on agricultural real estate, per section 8.0(9)(A) of the Act).[39] The phrase "pooling and servicing agreements" is outdated as such documents are no longer a fundamental prerequisite to doing business with Farmer Mac. We replace this phrase with one that refers to those documents supporting issuances of these types of guaranteed securities and which are material to the transaction(s).

5. Correspondence Related to Securities Activities [New Subpart C: Existing § 655.50; New § 655.21]

We proposed expanding the existing requirement to send us copies of substantive correspondence between Farmer Mac and the SEC or U.S. Treasury to cover all subject matters, instead of just those substantive communications related to securities activities and SEC compliance matters. We also proposed adding similar communications with the NYSE and setting timeframes for providing the information to us. Farmer Mac asked for clarification on the types of correspondence between the Corporation and the SEC or NYSE that needed to be sent to us, adding that sending all substantive communique could be unworkably burdensome. Farmer Mac did acknowledge that the provision was within our oversight authority, but stated the scope of communication was too broad. Farmer Mac went on to equate "substantive" correspondence with "routine" communications received by many employees of the Corporation through subscriptions to NYSE market data.

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[34] SEC Web site, *www.sec.gov/answers/form10k.htm. See also* Instructions to Form 10–K at section A.2, *www.sec.gov.*

[35] The SEC-required annual report to shareholders is usually includes an opening letter from the Chief Executive Officer, financial data, results of operations, market segment information, new product plans, subsidiary activities, and research and development activities on future programs. Companies sometimes elect to send their annual report on Form 10–K to their shareholders in lieu of, or in addition to, providing shareholders with a separate annual report to shareholders. SEC Web site, *www.sec.gov/answers/annrep.htm.*

[36] 17 CFR 240.14a–16.

[37] 12 U.S.C. 2279aa–6(e).

[38] Public Law 104–105, 110 Stat. 164 (February 10, 1996).

[39] *See* former § 621.20(b)(2)(ii) (58 FR 48786, September 20, 1993) referring to Farmer Mac I securities, relocated to existing § 655.50(b)(2)(ii)(70 FR 40635, July 14, 2005). Farmer Mac I securities are those backed by pools of qualified loans as defined in section 8.0(9)(A) of the Act.

Material such as mass-produced market updates are not "substantive correspondence between the Corporation and the SEC, U.S. Treasury, or NYSE" nor would we expect to be sent SEC and NYSE communique provided to a subscriber list. However, to alleviate any confusion, we clarify that correspondence directly addressing the activities of the Corporation is what is covered by the provision. Further, we refer to past clarifications on this issue, explaining that non-substantive transmittal letters accompanying SEC filings, for example, would not be considered "substantial" and therefore not required to be filed with the FCA.[40] On the other hand, we have particular interest in interpretive rulings of the NYSE, the SEC, or the Treasury Department bearing on Farmer Mac's ongoing business activities and expect such correspondence to be filed with us under this provision.

Farmer Mac asked that we exclude communications to NYSE that would be duplicative of official filings with the SEC. We agree and have changed the language of § 655.21(a) accordingly. Farmer Mac also requested guidance on how to transmit to us communique issued via secure electronic portals. We encourage Farmer Mac to contact us when they have such communique, at which time we will provide instructions on how to provide us copies of such.

In addition, Farmer Mac objected to being required in § 655.21(c) to notify us of any exemption it obtained from the SEC. Farmer Mac asked that we limit the requirement to those SEC exemptions obtained under the Securities Act of 1934. In making this request, Farmer Mac explained it is not subject to complete regulation by SEC and, except for certain mortgage-backed securities, it is not subject to the 1933 Securities Act and must only file reports under the 1934 Securities Act. We decline the request to limit the rule by naming a specific securities law. The definition for "securities" contained in § 655.1 explains that it means the securities law(s) appropriate to the context of the employing provision. However, we have changed the requirement to only require notice to us of those exemptions that are not generally available under SEC rules to similarly situated filers.

E. Other Comments

We received comments on portions of the proposed rule preamble language that do not address regulatory provisions and result in no change to the rule. These comments are discussed below.

1. Regulatory Flexibility Act Certification

We received a comment from an agent of Farmer Mac regarding the Regulatory Flexibility Act (RFA).[41] The commenter argued this rulemaking would impact a substantial number of small businesses, with whom Farmer Mac conducts business, and therefore would alter our assessment of the economic impact of the rulemaking. In the proposed rule, we certified that the rule would not have a significant economic impact on a large number of small entities, and that Farmer Mac did not qualify as a "small entity" as defined under the RFA. The RFA does not: (1) Seek preferential treatment for small entities; (2) require agencies to adopt regulations that impose the least burden on small entities; or (3) mandate exemptions for small entities. Rather, it requires agencies to examine public policy issues using an analytical process that identifies, among other things, barriers to small business competitiveness. Meaning, it requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities covered by the rulemaking, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on those same small entities. The rule is directed at Farmer Mac, which is not a small business. Further, we see nothing in this final rulemaking that creates significant economic barriers to small businesses. Those areas of the rule referencing agents of Farmer Mac expound upon existing regulations or statutory provisions and make no reference to the size of entity serving as an agent to Farmer Mac.

2. Need for Rulemaking

One stockholder-commenter expressed general concern with FCA regulating the corporate governance and disclosures for Farmer Mac given existing SEC rules in these areas. This commenter asked FCA to use caution as SEC rules are constantly changing. The commenter also stated FCA did not need to regulate governance behavior at Farmer Mac as the Corporation has a strong history of sophisticated corporate governance practices.

Voluntary governance is valuable, but it does not replace the stability that rules provide in assuring stakeholders of the safety and soundness of the Corporation. Our governance rules set a minimum level of performance that is mandatory for the Corporation. While we believe it is important to preserve individual operating flexibility wherever and whenever possible, our responsibility as regulator requires us to issue regulations we determine appropriate for safety and soundness reasons. We believe the assurances derived from a regulatory minimum standard, combined with the Corporation's voluntary governance efforts, will increase stockholder, investor, and public confidence in Farmer Mac.

Farmer Mac questioned the need for any regulatory changes, stating that insufficient recognition was given to its status as a public company. Farmer Mac also stated that it is unnecessary for FCA to regulate many corporate governance areas due to SEC requirements and thus we should remove those provisions. Farmer Mac explained that it is the mission of the SEC to protect investors, and the SEC provides sufficient regulation of board activities and corporate disclosures. Farmer Mac added that portions of the rule presented compliance concerns with other regulatory elements unrelated to FCA, but provided no specific citation to these other rules. Farmer Mac also asserted that the rulemaking would potentially harm the Corporation and those it serves in a material way instead of enhance safe and sound operations, but again offered no specifics.

The FCA, acting through OSMO, examines and provides general supervision over the activities of Farmer Mac pursuant to section 8.11 of the Act. As discussed elsewhere in this preamble, the role the SEC plays in the disclosure and reporting aspects of the Corporation does not remove our responsibility to regulate Farmer Mac's safe and sound operations. We have a responsibility to address corporate governance within the Corporation given its importance to the safe and sound operations of the Corporation and the current business climate in which Farmer Mac operates. As a GSE, the Corporation has strategic objectives that are both commercially and public policy oriented. Thus, governance of the Corporation must be understood and interpreted not only in the context of the fiduciary responsibilities to the Corporation and its shareholders, but also in the context of the statutory duty to further the Congressional purposes the Corporation was chartered to achieve. In addition, we explained in the proposed rule preamble that Farmer Mac, as a publicly traded company, is subject to many of the governance requirements of Sarbanes-Oxley, Dodd-Frank, and SEC disclosure regulations for publicly traded companies. However, with the recent events in the financial industry, increased sophistication in financial markets, and on-going scrutiny of GSE financial activities and related reporting practices, we believed it prudent to update our current regulatory standards related to Farmer Mac's Board governance, reporting, and disclosures.

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[40] *See* 58 FR 48786 (September 20, 1993), where FCA responded in 1993 to a similar comment of Farmer Mac regarding the meaning of "substantive".

[41] Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601).

Farmer Mac stated that FCA did not publish its current concerns with the risk management and governance operations of the Corporation in support of the rulemaking. This rulemaking is intended to ensure that appropriate board governance and risk management practices are in place at Farmer Mac. We are not limited to issuing regulations only when there is an existing adverse risk or problem. Our responsibilities as a safety and soundness regulator requires us to be proactive and prudent in our rulemaking, as well as reactive by providing standards that help avert potential problems. Thus, we have flexibility to issue rules either in response to a problem or proactively to ensure the Corporation's continued safe and sound business operations.

Farmer Mac also asserted FCA has in the past "deferred" to the oversight of the SEC and NYSE. We reject this assertion. The FCA, as an independent regulator of the Corporation, is not required to follow the actions of other regulators and we have never deferred our regulatory oversight to another agency. We do not view our past efforts to accommodate the Corporation's requests to modify our regulations in light of those issued by other regulators (whose regulations also affect the Corporation's operations) as a relinquishment of our safety and soundness authority.

3. Terminology

Farmer Mac asked that we define an assortment of terms and phrases used throughout the rule, asserting that many of these terms and phrases are not "established" in a body of law. Most of the terms and phrases identified by Farmer Mac are derived from corporate case law, model codes, and the Act itself. As such, we do not believe it necessary to further define them.

4. Regulatory Burden

Farmer Mac commented that it viewed many aspects of the rule as unnecessary and burdensome, making them inconsistent with the "Congressional mandate" that we eliminate unnecessary regulations. As we understand this comment, Farmer Mac is referring to the instructions of the Farm Credit System Reform Act of 1996 (1996 Act)[42] to reduce regulatory burdens. Section 212(b) of the 1996 Act requires us to continuously review our regulations to eliminate rules that are unnecessary, unduly burdensome, costly, or not based on law. The 1996 Act specifies that we are to make these eliminations only if they would be consistent with law, safety, and soundness. As explained throughout this preamble, Congress charged us to issue regulations to ensure the safety and soundness of the Corporation and this rule is consistent with the law and safety and soundness concerns.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the final rule will not have a significant economic impact on a substantial number of small entities. The Corporation has assets and annual income over the amounts that would qualify it as a small entity. Therefore, the Corporation is not considered a "small entity" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 650

Agriculture, Banks, banking, Credit, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 651

Agriculture, Banks, banking, Conduct standards, Conflict of interests, Elections, Ethical conduct, Rural areas.

12 CFR Part 653

Agriculture, Banks, banking, Capital, Conduct standards, Credit, Finance, Rural areas.

12 CFR Part 655

Accounting, Agriculture, Banks, banking, Accounting and reporting requirements, Disclosure and reporting requirements, Financial disclosure, Rural areas.

For the reasons stated in the preamble, parts 650, 651, 653, and 655 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GENERAL PROVISIONS

■ 1. The authority citation for part 650 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 5.25, 8.11, 8.12, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2183, 2243, 2252, 2261, 2279aa–11, 2279aa–12, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

■ 2. Add subpart B, under the heading "*Conservators, Receivers, and Liquidations*" consisting of existing §§ 650.1 through 650.80 as redesignated in the following table:

Old section	New section
650.1, no subpart	650.13, subpart B
650.5, no subpart	650.14, subpart B
650.10, no subpart	650.10, subpart B
650.15, no subpart	650.15, subpart B
650.20, no subpart	650.20, subpart B
650.25, no subpart	650.25, subpart B
650.30, no subpart	650.30, subpart B
650.35, no subpart	650.35, subpart B
650.40, no subpart	650.40, subpart B
650.45, no subpart	650.45, subpart B
650.50, no subpart	650.50, subpart B
650.55, no subpart	650.55, subpart B
650.60, no subpart	650.60, subpart B
650.65, no subpart	650.65, subpart B
650.70, no subpart	650.70, subpart B
650.75, no subpart	650.75, subpart B
650.80, no subpart	650.80, subpart B

■ 3. Add a new subpart A to read as follows:

Subpart A—Regulation, Examination and Enforcement

Sec.
650.1 Definitions.
650.2 Regulatory authority.
650.3 Supervision and enforcement.
650.4 Access to Corporation records and personnel.
650.5 Reports of examination.
650.6 Criminal referrals.

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[42] Public Law 104–105, 110 Stat. 162 (February 10, 1996).

Subpart A—Regulation, Examination and Enforcement

§ 650.1 Definitions.

The following definitions apply to this part:

Act or *Authorizing statute* means the Farm Credit Act of 1971, as amended.

Business day means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

Corporation or *Farmer Mac* means the Federal Agricultural Mortgage Corporation and its affiliates.

FCA means the Farm Credit Administration, an independent Federal agency of the executive branch.

NYSE means the New York Stock Exchange, a listing exchange.

OSMO means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

Our or *we* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

SEC means the Securities and Exchange Commission.

Securities Act means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), or both, as appropriate to the context of the provision employing the term.

Signed, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

§ 650.2 Regulatory authority.

(a) *General.* The Corporation is a for-profit Government-sponsored enterprise developed to provide a secondary market for qualified agricultural, USDA-guaranteed, and rural utility loans, with public policy objectives included in its statutory charter. The Corporation is regulated by the FCA, operating through OSMO. The Corporation also lists securities on the NYSE, making it subject to certain SEC listing and disclosure requirements.

(b) *Primary regulator.* The FCA, operating through OSMO, holds primary regulatory, examination, and enforcement authority over the Corporation. The FCA, operating through OSMO, is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with applicable laws and regulations.

(c) *Other regulatory authorities.* The Corporation registers its common stock and certain offerings of Farmer Mac Guaranteed Securities under the Securities Act and related regulations so must comply with certain SEC reporting requirements.

§ 650.3 Supervision and enforcement.

The Act provides FCA, acting through OSMO, with enforcement authority to protect the financial safety and soundness of the Corporation and to ensure that the Corporation's powers, functions, and duties are exercised in a safe and sound manner.

(a) *General supervision.* When we determine the Corporation has violated a law, rule, or regulation or is engaging in an unsafe or unsound condition or practice, we have enforcement authority that includes, but is not limited to, the following:

(1) Issue an order to cease and desist;

(2) Issue a temporary order to cease and desist;

(3) Assess civil monetary penalties against the Corporation and its directors, officers, employees, and agents; and

(4) Issue an order to suspend, remove, or prohibit directors and officers.

(b) *Financial safety and soundness of the Corporation.* When we determine the Corporation is taking excessive risks that adversely impact the adequacy of Regulatory Capital, we have authority to address that risk. This includes, but is not limited to, requiring capital restoration plans, restricting dividend distributions, requiring changes in the Corporation's obligations and assets, requiring the acquisition of new capital and restricting those Corporation activities determined to create excessive risk to the Corporation's Regulatory Capital.

§ 650.4 Access to Corporation records and personnel.

(a) The Corporation must make its records available promptly upon request by OSMO, at a location and in a form and manner acceptable to OSMO.

(b) The Corporation must make directors, officers, employees and other individuals or entities engaged by the Corporation to participate in the conduct of the Corporation's business available to OSMO during the course of an examination or supervisory action when OSMO determines it necessary to facilitate an examination or supervisory action.

§ 650.5 Reports of examination.

The Corporation is subject to the provisions in 12 CFR part 602 regarding FCA Reports of Examination.

§ 650.6 Criminal referrals.

The rules at 12 CFR part 612, subpart B, regarding "Referral of Known or Suspected Criminal Violations" are applicable to the Corporation.

■ 4. Revise part 651 to read as follows:

PART 651—FEDERAL AGRICULTURAL MORTGAGE CORPORATION GOVERNANCE

Subpart A—General

Sec.
651.1 Definitions.
651.2 [Reserved]

Subpart B—Standards of Conduct

651.21 [Reserved]
651.22 Conflict-of-interest policy.
651.23 Implementation of policy.
651.24 Director, officer, employee, and agent responsibilities.

Subpart C—Board Governance

651.30 [Reserved]
651.35 [Reserved]
651.40 [Reserved]
651.50 Committees of the Corporation's board of directors.

Authority: Secs. 4.12, 5.9, 5.17, 8.3, 8.11, 8.14, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2183, 2243, 2252, 2279aa–3, 2279aa–11, 2279aa–14, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

Subpart A—General

§ 651.1 Definitions.

The following definitions apply to this part:

Act or *Authorizing statute* means the Farm Credit Act of 1971, as amended.

Agent means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

Affiliate means any entity established under authority granted to the Corporation under section 8.3(c)(14) of the Act.

Appointed director means a member of the Corporation's board of directors who was appointed to the Corporation board by the President of the United States of America.

Business day means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

Class A stockholders means holders of common stock in the Corporation that are insurance companies, banks, or other financial institutions or entities.

Class B stockholders means holders of common stock in the Corporation that are Farm Credit System institutions.

Conflict-of-interest means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his or her official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes.

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

Director elections mean the process of searching for director candidates, conducting director nominations, and voting for directors.

Elected director means a member of the Corporation's board of directors who was elected by either Class A or Class B stockholders.

Employee means any salaried individual working part-time, full-time, or temporarily for the Corporation.

Entity means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

FCA means the Farm Credit Administration, an independent Federal agency of the executive branch.

Material means conflicting interests of sufficient magnitude or significance that a reasonable person with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

Officer means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

OSMO means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

Our or *we* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

Person means individual or entity.

Reasonable person means a person under similar circumstances exercising the average level of care, skill, and judgment in his or her conduct.

Resolved means an actual or potential material conflict-of-interest that has been altered so that a reasonable person with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner and in furtherance of the interests and statutory purposes of the Corporation.

Signed, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

§ 651.2 [Reserved]

Subpart B—Standards of Conduct

§ 651.21 [Reserved]

§ 651.22 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to this regulation as if they were that person's own interests:

(1) Interests of any individual residing in that person's household;

(2) Interests of any individual identified as a legal dependent of that person;

(3) Interests of that person's general business partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning current or prospective employment.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 651.23 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 651.24 Director, officer, employee, and agent responsibilities.

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart C—Board Governance

§ 651.30 [Reserved]

§ 651.35 [Reserved]

§ 651.40 [Reserved]

§ 651.50 Committees of the Corporation's board of directors.

(a) *General.* No committee of the board of directors may be delegated the authority of the board of directors to amend Corporation bylaws. No committee of the board of directors shall relieve the board of directors or any board member of a responsibility imposed by law or regulation.

(b) *Required committees.* The board of directors of the Corporation must have committees, however styled, that address risk management, audit, compensation, and corporate governance. Neither the risk management committee nor the audit committee may be combined with any other committees. This provision does not prevent the board of directors from establishing any other committees that it deems necessary or useful to carrying out its responsibilities.

(c) *Charter.* Each committee required by this section must develop a formal written charter that specifies the scope of the committee's powers and responsibilities, as well as the committee's structure, processes, and membership requirements. To be effective, the charter must be approved by action of the full board of directors. No director may serve as chairman of more than one of the board committees required by this section.

(d) *Frequency of meetings and records.* Each committee of the board of directors required by this section must meet with sufficient frequency to carry out its obligations and duties under applicable laws, regulations, and its operating charter. Each of these committees must maintain minutes of its meetings. The minutes must record attendance, the agenda (or equivalent list of issues under discussion), a summary of the relevant discussions held by the committee during the meeting, and any resulting recommendations to the board. Such minutes must be retained for a minimum of 3 years and must be available to the entire board of directors and to OSMO.

■ 5. Add part 653 to read as follows:

PART 653—FEDERAL AGRICULTURAL MORTGAGE CORPORATION RISK MANAGEMENT

Sec.
653.1 Definitions.
653.2 General.
653.3 Risk management.
653.4 Internal controls.

Authority: Secs. 8.3, 8.4, 8.6, 8.8, and 8.10 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, and 2279aa–10).

§ 653.1 Definitions.

The following definitions apply to this part:

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

FCA means the Farm Credit Administration, an independent Federal agency of the executive branch.

OSMO means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

§ 653.2 General.

The Corporation's board of directors must approve the overall risk-appetite of the Corporation and regularly monitor internal controls to provide reasonable assurance that risk-taking activities are conducted in a safe and sound manner.

§ 653.3 Risk management.

(a) *Risk management program.* The Corporation's board of directors must establish, maintain, and periodically update an enterprise-wide risk management program addressing how the Corporation's activities are exercised in a safe and sound manner. The implementation of the risk management program may reside with senior management. The risk management program at a minimum must:

(1) Periodically assess and document the Corporation's risk profile.

(2) Align the Corporation's risk profile with the board-approved risk appetite and the Corporation's operational planning strategies and objectives.

(3) Specify management's authority to carry out risk management responsibilities.

(4) Integrate risk management and control objectives into management goals and compensation structures.

(5) Comply with all applicable FCA regulations and policies.

(b) *Risk committee.* The Corporation's board-level risk committee assists the full board of directors in the oversight of the enterprise-wide risk management program of the Corporation.

(1) The risk committee must have at least one member with an understanding of risk management commensurate with the Corporation's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors.

(2) The responsibilities of the risk committee include, but are not limited to:

(i) Periodically assessing management's implementation of the enterprise-wide risk management program;

(ii) Recommending changes to the risk management program to keep the program commensurate with the Corporation's capital structure, risk appetite, complexity, activities, size, and other appropriate risk-related factors; and

(iii) Receiving and reviewing regular reports directly from personnel responsible for implementing the Corporation's risk management program.

(c) *Management of risk.* The Corporation must have a risk officer, however styled, who is responsible for implementing and maintaining the enterprise-wide risk management practices of the Corporation. The risk officer must have risk management experience commensurate with the Corporation's capital structure, risk appetite, complexity, activities, and size. The responsibilities of the risk officer include, but are not limited to:

(1) Identifying and monitoring compliance with risk limits, exposures, and controls;

(2) Implementing risk management policies, procedures, and risk controls;

(3) Developing appropriate processes and systems for identifying and reporting risks, including emerging risks;

(4) Reporting on risk management issues, emerging risks, and compliance concerns; and

(5) Making recommendations on adjustments to the risk management policies, procedures, and risk controls of the Corporation.

§ 653.4 Internal controls.

(a) The Corporation's board of directors must adopt an internal controls policy that provides adequate directions for, and identifies expectations in, establishing effective safety and soundness control over, and accountability for, the Corporation's operations, programs, and resources.

(b) The internal controls system must address:

(1) The efficiency and effectiveness of the Corporation's activities;

(2) Safeguarding the assets of the Corporation;

(3) Evaluating the reliability, completeness, and timely reporting of financial and management information;

(4) Compliance with applicable laws, regulations, regulatory directives, and the policies of the Corporation's board of directors and senior management;

(5) The appropriate segregation of duties among the Corporation personnel so that personnel are not assigned conflicting responsibilities; and

(6) The completeness and quality of information provided to the Corporation's board of directors.

(c) The Corporation is responsible for establishing and implementing an effective system to identify internal controls weaknesses and taking action to correct detected weaknesses. The Corporation must document:

(1) The process used to identify weaknesses,

(2) Any found weaknesses, and

(3) How identified weaknesses were addressed.

■ 6. Revise part 655 to read as follows:

PART 655—FEDERAL AGRICULTURAL MORTGAGE CORPORATION DISCLOSURE AND REPORTING REQUIREMENTS

Subpart A—General

Sec.
655.1 Definitions.

Subpart B—Report of Condition of the Federal Agricultural Mortgage Corporation

655.10 Reports of condition.
655.15 Interim reports, notices, and proxy statements.

Subpart C—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

655.20 Securities not registered under the Securities Act.
655.21 Filings and communications with the U.S. Treasury, the SEC and NYSE.

Authority: Secs. 5.9, 8.3, 8.11, and 8.12 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2243, 2279aa–3, 2279aa–11, 2279aa–12).

Subpart A—General

§ 655.1 Definitions.

The following definitions apply to this part:

Act or *authorizing statute* means the Farm Credit Act of 1971, as amended.

Business day means a day the Corporation is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

Corporation means the Federal Agricultural Mortgage Corporation and its affiliates.

FCA means the Farm Credit Administration, an independent Federal agency of the executive branch.

Material, when used to qualify a requirement to furnish information as to any subject, means the information required for those matters to which there is a substantial likelihood that a reasonable person would attach importance in making investor decisions or determining the financial condition of the Corporation.

NYSE means the New York Stock Exchange, a listing exchange.

OSMO means the FCA Office of Secondary Market Oversight, which is responsible for the general supervision of the safe and sound exercise of the Corporation's powers, functions, and duties and compliance with laws and regulations.

Our or *us* means the FCA or OSMO, as appropriate to the context of the provision employing the term.

Person means individual or entity.

SEC means the Securities and Exchange Commission.

Securities Act means the Securities Act of 1933 (15 U.S.C. 77a *et seq.)* or the Exchange Act of 1934 (15 U.S.C. 78a *et seq.),* or both, as appropriate to the context of the provision employing the term.

Signed, when referring to paper form, means a manual signature, and, when referring to electronic form, means marked in a manner that authenticates each signer's identity.

Subpart B—Reports of Condition of the Federal Agricultural Mortgage Corporation

§ 655.10 Reports of condition.

(a) *General.* The Corporation must prepare and publish annual reports to its shareholders of its condition, including financial statements and related schedules, exhibits, and other documents that are part of the reports. The contents of each report must be equivalent in content to the annual report to shareholders required by the Securities Act unless we issue instructions otherwise.

(b) *Signatures and certification.* Each report issued under this subpart must be signed. The Corporation must designate the representatives who will sign each report. The name and position title of each person signing the report must be printed beneath his or her signature. The signatories must certify the report by using the SEC rules on certifications for disclosures in annual reports to shareholders.

(c) *Distribution.* The Corporation must distribute the signed annual report of condition to its shareholders within 120 days of its fiscal year-end. Within 5 days of signing, the Corporation must provide us one paper and one electronic copy of every signed report that is distributed to its shareholders. If the report is the same as that filed with the SEC, the Corporation may instead provide the signed reports to us only in electronic form and simultaneous with filing the report with the SEC.

(1) The Corporation must publish on its Web site a copy of each annual report to shareholders within 3 business days of filing the report with us. The report must remain on the Web site until the next report is posted. When the reports are the same as those filed with the SEC, electronic links to the SEC filings Web site may be used in satisfaction of this requirement.

(2) Upon receiving a request for an annual report of condition from a stockholder, investor, or the public, the Corporation must promptly provide the requester the most recent annual report issued in compliance with this section.

§ 655.15 Interim reports, notices, and proxy statements.

(a) The Corporation must provide to us one paper and one electronic copy of every interim report, notice, and proxy statement filed with the SEC within 1 business day of filing the item with the SEC, including all papers and documents that are a part of the report, notice, or statement.

(b) The Corporation must publish a copy of each interim report, notice, and proxy statement on its Web site within 5 business days of filing the document(s) with the SEC. The Corporation may omit from these postings confidential, non-public information contained in the interim report, notice, or proxy statement. The interim report, notice, or proxy statement must remain on the Web site for 6 months or until the next annual report of condition is posted, whichever is later. Electronic links to the SEC filings Web site may be used in satisfaction of this requirement.

Subpart C—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 655.20 Securities not registered under the Securities Act.

The Corporation must make special filings with the Director of OSMO for securities either issued or guaranteed by the Corporation that are not registered under the Securities Act. These filings include, but are not limited to:

(a) Either one paper or one electronic copy of any offering circular, private placement memorandum, or information statement prepared in connection with the securities offering at or before the time of the securities offering.

(b) For securities backed by qualified loans as defined in section 8.0(9)(A) of the Act, either one paper or one electronic copy of the following within 1 business day of the finalization of the transaction:

(1) The private placement memoranda for securities sold to investors; and

(2) The final agreement and all supporting documents material to the Corporation's purchase of a security under section 8.6(e) of the Act.

(c) For securities backed by qualified loans as defined in section 8.0(9)(B) of the Act, the Corporation must provide summary information on such securities issued during each calendar quarter in the form prescribed by us. Such summary information must be provided with each report of condition and performance (Call report) filed pursuant to § 621.12, and at such other times as we may require.

§ 655.21 Filings and communications with the U.S. Treasury, the SEC, and NYSE.

(a) The Corporation must send us one paper and one electronic copy of every filing made with U.S. Treasury, the SEC, or NYSE, including financial statements and related schedules, exhibits, and other documents that are a part of the filing. Such items must be filed with us no later than 1 business day after the U.S. Treasury, SEC, or NYSE filing. For those filings with the NYSE that duplicate ones made to the SEC, the Corporation may send only the SEC filing to us. If the filing is one addressed in subpart B of this part, no action under this paragraph is required.

(b) The Corporation must send us, within 3 business days and according to instructions provided by us, copies of all substantive correspondence between the Corporation and the U.S. Treasury, the SEC, or NYSE that are directed at the activities of the Corporation.

(c) The Corporation must notify us within 1 business day if it becomes exempt or claims exemption from the filing requirements of the Securities Act. Notice is not required when the Corporation claims an exemption that is generally available under SEC rules and regulations to similarly situated filers.

Date: July 20, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–17455 Filed 7–26–16; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD; Amendment 39–18594; AD 2016–15–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. This AD requires the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the airplane operating temperatures. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door and impede evacuation in the event of an emergency.

DATES: This AD is effective August 31, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 31, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar A. Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on January 13, 2016 (81 FR 1584) ("the NPRM"). The NPRM was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. The NPRM proposed to require the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the airplane operating temperatures. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door and impede evacuation in the event of an emergency.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–03, dated March 13, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> There have been reports where operators experienced an inability to open the main passenger door following severe hot soak conditions.
>
> Investigation determined that the nylon slider in the plunger assembly of the door handle is susceptible to thermal expansion

and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider.

This condition, if not corrected, could result in an inability to open the main passenger door and could impede evacuation in the event of an emergency.

This [Canadian] AD mandates the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the aeroplanes operating temperatures.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8435.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier issued the following service Information:

- Bombardier Service Bulletin 700–1A11–52–021, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–044, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–5008, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–6008, Revision 01, dated February 3, 2015.

The service information describes procedures to incorporate a new configuration to the passenger door external handle detent. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 60 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $20,400, or $340 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–15–03 Bombardier, Inc.: Amendment 39–18594. Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD.

(a) Effective Date

This AD is effective August 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers (S/Ns) 9002 through 9515 inclusive and S/N 9998.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door that could impede evacuation in the event of an emergency.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Modification

Within 15 months after the effective date of this AD, incorporate the new configuration to the passenger door external handle detent, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(4) of this AD:

(1) Bombardier Service Bulletin 700–1A11–52–021, Revision 01, dated February 3, 2015 (for Model BD–700–1A11 airplanes).

(2) Bombardier Service Bulletin 700–52–044, Revision 01, dated February 3, 2015 (for Model BD–700–1A10 airplanes).

(3) Bombardier Service Bulletin 700–52–5008, Revision 01, dated February 3, 2015 (for Model BD–700–1A11 airplanes).

(4) Bombardier Service Bulletin 700–52–6008, Revision 01, dated February 3, 2015 (for Model BD–700–1A10 airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the following service information, as applicable. This service information is not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 700–1A11–52–021, dated November 9, 2012.

(2) Bombardier Service Bulletin 700–52–044, dated November 9, 2012.

(3) Bombardier Service Bulletin 700–52–5008, dated November 9, 2012.

(4) Bombardier Service Bulletin 700–52–6008, dated November 9, 2012.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–03, dated March 26, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 700–1A11–52–021, Revision 01, dated February 3, 2015.

(ii) Bombardier Service Bulletin 700–52–044, Revision 01, dated February 3, 2015.

(iii) Bombardier Service Bulletin 700–52–5008, Revision 01, dated February 3, 2015.

(iv) Bombardier Service Bulletin 700–52–6008, Revision 01, dated February 3, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 19, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17538 Filed 7–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 145

[Docket No.: FAA–2016–8744; Amdt. No. 145–31]

RIN 2120–AK86

Repair Stations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule.

SUMMARY: The Federal Aviation Administration (FAA) is revising its repair station rules to remove the requirement that a repair station with an airframe rating provide suitable permanent housing to enclose the largest type and model aircraft listed on its operations specifications. The FAA is also revising its general housing and facilities regulation to provide that a repair station's housing for its facilities, equipment, materials, and personnel must be consistent not only with its ratings, but also with its limitations to those ratings. Finally, the FAA is adding an additional general purpose limited rating to cover maintenance work not covered by the existing 12 limited rating categories. These changes are necessary because the existing ratings and housing rules impose unnecessary housing requirements on certain repair stations that work only on component parts of an aircraft. These changes will enable some repair stations to obtain a limited rating that is tailored to their intended scope of work, and will relieve repair stations that have a limited airframe rating, but that work only on component parts of an aircraft, from having to provide large and expensive housing to enclose the entire aircraft when that type of housing is not needed for the limited scope of their work.

DATES: Effective July 27, 2016.

Submit comments on or before August 26, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8744 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Susan Traugott Ludwig, Aircraft Maintenance Division, Repair Station Branch, AFS–340, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (214) 587–8887; email *susan.traugott.ludwig@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Final Adoption

Section 553(b)(3)(B) of the Administrative Procedures Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue an interim final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and public comment to this interim final rule are unnecessary and contrary to the public interest. The provisions in this interim final rule will remove restrictive housing language affecting repair stations that hold limited airframe ratings and perform maintenance on airframe component parts rather than the entire aircraft. This rule will also amend the limited ratings section by adding a rating that will provide certificate holders and applicants with an additional option for defining the work they actually intend to perform. The removal of the restrictive housing language and adding an additional limited rating will not adversely affect current and future certificate holders. Regarding the restrictive housing language, this change is also consistent with how this regulation has been applied in practice. In addition, the removal of the restrictive language and adding an additional limited rating will not have a negative safety impact. The language is adopted to relieve economic burdens on the repair station industry and the possibility of forced repair station closings if the amended language were to be applied literally. Therefore, the FAA has determined that notice and public comment prior to publication are unnecessary.

In addition, in accordance with 5 U.S.C. 553(d)(1), the FAA is making this interim final rule effective upon publication because it is a substantive rule that relieves a restriction.

Comments Invited

The Regulatory Policies and Procedures of the Department of Transportation (DOT), (44 FR 1134; February 26, 1979), provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Although the FAA is inviting comments, we have made the determination to adopt this interim final rule without prior notice and public comment due to the need to expedite a resolution for repair stations that perform maintenance on airframe component parts by removing the restrictive housing requirement and providing an additional limited rating as another option.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements, and section 44707, Examining and rating air agencies. Under section 44701, the FAA may prescribe equipment and facilities for, and the timing and manner of, inspecting, servicing, and overhauling of aircraft, aircraft engines, propellers, appliances and constituent parts thereof. Under section 44707, the FAA may examine and rate repair stations. This regulation is within the scope of section 44701 since it specifies the facilities required, and the regulation is within the scope of 44707 since it specifies the ratings that are held by the repair stations.

I. Background

Statement of the Problem

The FAA's rules provide for two categories of repair station ratings that define and govern which articles[1] repair stations may work on under the part 145 regulations. These are class ratings (provided for in § 145.59) and limited ratings (provided for in § 145.61). Class ratings are broadly defined, and generally cover all articles listed in the category. Under § 145.61, however, the "FAA may issue a limited rating to a repair station that maintains or alters only a particular type of airframe, powerplant, propeller, radio, instrument, or accessory, or part thereof." Section 145.61(b) provides that the FAA may issue limited ratings for 12 categories of aircraft articles. These are:

(1) Airframes of a particular make and model;

(2) Engines of a particular make and model;

(3) Propellers of a particular make and model;

(4) Instruments of a particular make and model;

(5) Radio equipment of a particular make and model;

(6) Accessories of a particular make and model;

(7) Landing gear components;

(8) Floats, by make;

(9) Nondestructive inspection, testing, and processing;

(10) Emergency equipment;

(11) Rotor blades, by make and model; and

(12) Aircraft fabric work.

Prior to 2001, § 145.33(b)[2] listed 13 categories for which the FAA issued limited ratings. The last of these (the 13th category) covered "Any other purpose for which the Administrator finds the applicant's request is appropriate." In the 2001 amendments, the FAA, among other things, removed the 13th category of limited ratings. Now, as before 2001, if an applicant for a repair station certificate did not want a full class rating, but wanted to work only on a particular component or component parts of an aircraft, the applicant would seek a limited rating. After that amendment became effective in 2003, if the component part or parts listed in the application were not airframe components and did not fit in one of the other 11 limited rating categories, the agency often issued a limited airframe rating anyway with the make and model of the aircraft listed on the operations specifications, and the scope of work pertaining to the component parts requested, included as a limitation. In most of these cases, the FAA did not consider the requirements in § 145.103(b) that airframe-rated repair stations must provide housing to enclose the entire aircraft because the scope of the requested work did not require the entire aircraft to be enclosed.

In many cases, the issuance of these ratings ran afoul of the agency's repair station housing and facilities regulations because many airframe-rated repair stations performing only component part maintenance did not provide housing that could enclose the entire aircraft listed on their operations specifications. Although these categories of repair stations could easily meet the requirements of § 145.103(a)(1) (which requires housing for the facilities, equipment, materials, and personnel consistent with the repair station's ratings) if their work was limited to working only on component parts, many did not meet the requirements of § 145.103(b). To answer the question whether the term "airframe rating" as used in § 145.103(b) contemplates a limited airframe rating, in March 2015, the FAA's Office of the

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[1] Ref. 14 CFR 145.3, "Article" means aircraft, airframe, aircraft engine, propeller, appliance, or component part.

[2] The FAA amended part 145 in 2001 (66 FR 41088, August 6, 2001). The new rules became effective on April 6, 2003.

Chief Counsel issued a legal interpretation concluding that a limited airframe rating is an airframe rating as the term is used in that regulation.[3] The interpretation essentially stated that an airframe-rated repair station, whether limited airframe or class airframe-rated, must obtain the housing as required in § 145.103(b).

Prior to the March 2015 interpretation, some FAA offices that issued limited airframe ratings for component parts work interpreted the term airframe rating in § 145.103(b) to refer only to a *class* airframe rating. Thus, in those cases, the issue of requiring housing to enclose the largest aircraft on the repair station's operations specifications was never addressed. According to that reasoning, a class rating as described in § 145.59(a) would require housing large enough to enclose the entire aircraft, but a limited airframe rating provided as described in § 145.61(b)(1) would not.[4] Consequently, if an applicant sought only a limited airframe rating for a component part(s), those FAA offices did not believe § 145.103(b) applied to those situations.

Currently, many repair stations hold a limited airframe rating and do not have housing to enclose the largest type and model aircraft listed on their operations specifications. As one consequence of the above-referenced legal interpretation, some repair stations that perform maintenance on component parts only, and hold a limited airframe rating, are being advised by their local FAA offices to either obtain costly housing to enclose the largest type and model aircraft on their operations specifications, or to seek an exemption from the housing requirement. This has created an economic burden on these repair stations and a potential resource burden on the FAA to process a likely flood of petitions for exemption.

II. Overview of Interim Final Rule

To remedy the situations whereby some limited airframe-rated repair stations are not in full compliance with the housing regulation, and where, in some cases, the scope of work being performed does not technically fit within the airframe rating, this interim final rule will remove the one-size-fits-all requirement of current § 145.103(b) and provide an additional limited rating category to cover work not addressed by the existing 12 categories. These actions will assist the repair station industry by eliminating the costly housing requirement that is not necessary in many cases. In place of that housing regulation, we are adding two amendments that will address and resolve this issue.

First, the FAA is adding "and limitations" to the housing and facilities requirements in § 145.103(a)(1). With this change, the housing for a repair station's facilities, equipment, materials, and personnel must be consistent not only with its ratings, but also with the limitations to those ratings. Adding "limitations" to this regulation will assist both the repair stations and the FAA in determining a repair station's housing needs by considering the limitations associated with the rating under review. For example, a repair station with a limited powerplant rating may list a certain make and model of powerplant under its limited rating, but intend to maintain or repair only specified component parts of the engine, such as blade or vane repairs. The repair station would only need to provide housing, equipment, materials, and personnel to perform maintenance on blades and vanes if it does not perform work on the entire engine.

Second, the FAA is adding the 13th limited rating category under § 145.61(b) that was removed in the 2001 final rule. The new limited rating will allow the FAA to issue a limited rating for any other purpose for which it finds the applicant's request is appropriate. The additional limited rating is intended to be issued for repair stations that wish to perform maintenance on items such as aircraft interiors, upholstering, serving carts, cabinets, unit load devices, and other component items that do not necessarily fit into one of the 12 existing limited ratings. This action provides future certificate holders another option for ratings that will better define the type of maintenance they wish to perform. It will reduce the number of limited airframe ratings issued for component part work for which an airframe rating is not needed. In some cases, existing repair stations that hold limited airframe ratings issued for items that do not fit the category may amend their rating to the newly restored 13th limited rating, but such amendments are not required. If, however, an existing airframe-rated repair station wishes to add a non-airframe component to its operations specifications or capabilities list, it would have to apply for a limited rating in one of the other 12 categories, as appropriate.

III. Discussion of Interim Final Rule

In order to remedy the above-described problems caused by the restrictive housing requirements of § 145.103(b), the FAA is removing the text in its entirety. Removing existing § 145.103(b) provides flexibility to certificate holders and applicants with regard to the type of housing they are required to provide. Current § 145.103(c) provides that a certificated repair station may perform maintenance on articles outside of its housing if it provides suitable facilities that meet the general housing and facilities requirements of § 145.103(a) so that the work can be done in accordance with 14 CFR part 43. This paragraph is renumbered as § 145.103(b).

Although the requirement to enclose the largest type and model aircraft is no longer required, suitable housing as identified in §§ 145.101 and 145.103(a) remains applicable for all repair stations, regardless of whether they hold class or limited ratings. Section 145.101 requires, generally, that each certificated repair station "must provide housing, facilities, equipment, materials, and data that meet the applicable requirements for the issuance of the certificate and ratings the repair station holds." Therefore, the FAA must evaluate each repair station application to assure that the housing and other requirements appropriate to the rating sought are met. In order to meet the requirements of §§ 145.101 and 145.103(a), repair stations that intend to work on an entire aircraft, or large portions of it, would still be required to provide housing that ensures appropriate protection from environmental elements for the work being performed.

The FAA is removing the introductory phrase of § 145.205(d) ("Notwithstanding the housing requirement of § 145.103(b)") because the referenced section is being withdrawn by this rulemaking. As a result of that withdrawal, part 145 will no longer contain a specific housing regulation requiring an entire aircraft to be enclosed—rather the general requirements of §§ 145.101 and 145.103 will require housing and other protections appropriate for the work performed. Newly renumbered § 145.103(b) (formerly § 145.103(c)) permits repair stations (including those authorized to perform line maintenance under § 145.205(d)) to perform maintenance outside of its housing so long as they provide suitable facilities to adequately protect the work and personnel. Although new § 145.103(b) will still require a repair station to provide suitable facilities if the repair station works outside of its housing, the intent remains that those repair stations authorized to perform line maintenance at airport locations on the ramp outside of housing should ensure, to the extent practicable, that the work is protected from adverse elements in accordance with §§ 145.101 and 145.103.

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[3] FAA legal interpretation to Finazzo (March 4, 2015) concluded that 14 CFR 145.103(b) requires a repair station with a limited airframe rating to have housing large enough to enclose the largest aircraft listed on its operations specifications. The opinion stated that "nothing in the regulatory history or plain language of the regulation supports a conclusion that the airframe rating of section § 145.103(b) applies only to class ratings and excludes limited airframe ratings." *See* Docket No. FAA–2016–8744.

[4] This, despite that § 145.61(b)(1) provides for a limited airframe rating for a "particular make and model" aircraft. An example could be a limited airframe rating for a Boeing Model 737 aircraft that would allow a repair station to perform maintenance on only that model aircraft and no others. In that case, the holder of that limited rating would be required to provide housing to enclose that entire aircraft. It would be an anomalous result if the holder of a class airframe rating with a Boeing 737 aircraft listed on its operations specifications were required to house the entire aircraft, but the holder of a limited airframe rating for the same aircraft were not.

In addition, the FAA is adding the phrase "and limitations" to the end of paragraph (1) of § 145.103(a). The section will now require that each certificated repair station must provide: "(1) Housing for the facilities, equipment, materials, and personnel consistent with its ratings and limitations." With this change, if a repair station's scope of work is limited to work that does not require the size and type of housing that the rating without the limitation would require, the repair station would need to provide housing only sufficient to accommodate its limited scope of work.

Finally, this interim final rule adds a limited rating to § 145.61(b) that allows the FAA to issue limited ratings for any other purpose for which it finds the applicant's request is appropriate. This new rating provides applicants and existing certificate holders another option for ratings that will better define the type of maintenance they wish to perform, whether it be on component parts of an airframe, powerplant, propeller, or on any other article in the class ratings identified in § 145.59. Without this additional rating category, many repair stations could continue to be issued a limited airframe rating as a catch all rating, which does not always clearly identify the actual type of work being performed.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this interim final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows.

Currently, § 145.103(b) states that a certificated repair station with an airframe rating must provide suitable permanent housing to enclose the largest type and model of aircraft listed on its operations specifications. This requirement is problematic for airframe rated repair stations that perform maintenance only on component parts and not the entire aircraft. Airframe-rated repair stations that do not provide the housing because they do not need it for their scope of work need to petition for an exemption from it. This rule will remove § 145.103(b) and retain the general housing and facilities requirements in §§ 145.101 and 145.103(a) and (c), which specify that each repair station must provide suitable housing consistent with its ratings. Thus this rule will remove an unnecessary burden for airframe-rated repair stations, and the costs would be minimal, as it is relieving in nature.

The FAA's review of past exemption requests prompted by the existing requirement in § 145.103(b) showed that from 2004 to the present, the agency processed 15 petitions for exemption. The FAA estimates that, on average, a petitioner spends 20 hours to prepare a petition for exemption from § 145.103(b), and the FAA takes 50 hours to process each of those petitions. According to data from the Bureau of Labor Statistics, in 2016 the mean hourly wage with benefits is $41.38 for a mechanic and supervisor. The average hourly wage for a J band FAA employee in Washington DC is $58.00. Over a twelve-year period at today's wages, the estimated savings equals 15 exemptions multiplied by 20 hours per exemption multiplied by $41.38 per hour, plus 15 exemptions multiplied by 50 hours per exemption multiplied by $58.00 per hour, which equals $56,000, or approximately $4,700 annually. This is a minimal cost; therefore, under Department of Transportation Order DOT 2100.5, the agency is not required to prepare a full regulatory evaluation.

The FAA has, therefore, determined that this rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Many repair stations are small entities. Future business decisions to provide repair of aircraft components can be negatively impacted if the existing housing rule for airframe-rated repair stations remains in place. Currently each airframe-rated repair station must provide suitable permanent housing to enclose the largest type and model of aircraft listed on its operations specifications. For those airframe-rated repair stations that provide component maintenance only, and not full aircraft maintenance, the requirement to provide permanent housing for the aircraft would be very expensive and counterproductive. Most of the petitions for exemption from § 145.103(b) are from repair stations that do not work on an entire aircraft. This rule removes § 145.103(b) so that all repair stations will need to provide only the housing necessary to conduct their repair business. Thus this rule will be relieving in nature and be a benefit to small entities, albeit a small benefit. While the rule will impact a substantial number of small entities, it will not impose a significant economic impact on them.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it offers the same relieving impact on affected international repair stations.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this interim final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Harmonization. This rulemaking will not be involved in harmonization with any foreign aviation authorities.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this interim final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this interim final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 145

Aircraft, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 145—REPAIR STATIONS

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44709, 44717.

■ 2. Amend § 145.61 by—

■ A. Removing "and" from the end of paragraph (b)(11);

■ B. Removing the period from the end of paragraph (b)(12) and adding "; and" in its place; and

■ C. Adding paragraph (b)(13).

The addition reads as follows:

§ 145.61 Limited ratings.

* * * * *

(b) * * *

(13) Any other purpose for which the FAA finds the applicant's request is appropriate.

* * * * *

■ 3. Revise § 145.13 to read as follows:

§ 145.103 Housing and facilities requirements.

(a) Each certificated repair station must provide—

(1) Housing for the facilities, equipment, materials, and personnel consistent with its ratings and limitations.

(2) Facilities for properly performing the maintenance, preventive maintenance, or alterations of articles or the specialized service for which it is rated. Facilities must include the following:

(i) Sufficient work space and areas for the proper segregation and protection of articles during all maintenance, preventive maintenance, or alterations.

(ii) Segregated work areas enabling environmentally hazardous or sensitive operations such as painting, cleaning, welding, avionics work, electronic work, and machining to be done properly and in a manner that does not adversely affect other maintenance or alteration articles or activities;

(iii) Suitable racks, hoists, trays, stands, and other segregation means for the storage and protection of all articles undergoing maintenance, preventive maintenance, or alterations, and;

(iv) Space sufficient to segregate articles and materials stocked for installation from those articles undergoing maintenance, preventive maintenance, or alterations to the standards required by this part.

(v) Ventilation, lighting, and control of temperature, humidity, and other climatic conditions sufficient to ensure personnel perform maintenance, preventive maintenance, or alterations to the standards required by this part.

(b) A certificated repair station may perform maintenance, preventive maintenance, or alterations on articles outside of its housing if it provides suitable facilities that are acceptable to the FAA and meet the requirements of § 145.103(a) so that the work can be done in accordance with the requirements of part 43 of this chapter.

■ 4. Amend § 145.205(d) by revising the introductory text of paragraph (d) to read as follows:

§ 145.205 Maintenance, preventive maintenance, and alterations performed for certificate holders under parts 121, 125, and 135, and for foreign persons operating a U.S.-registered aircraft in common carriage under part 129.

* * * * *

(d) The FAA may grant approval for a certificated repair station to perform line maintenance for an air carrier certificated under part 121 or part 135 of this chapter, or a foreign air carrier or foreign person operating a U.S.-registered aircraft in common carriage under part 129 of this chapter on any aircraft of that air carrier or person, provided-

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on July 15, 2016.

Michael Huerta,

Administrator.

[FR Doc. 2016–17612 Filed 7–26–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–78169]

Order Recognizing the Resource Extraction Payment Disclosure Requirements of the European Union, Canada and the U.S. Extractive Industries Transparency Initiative as Substantially Similar to the Requirements of Rule 13q–1 Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: We are issuing an order recognizing the resource extraction payment disclosure requirements of the European Union, Canada and the U.S. Extractive Industries Transparency Initiative as substantially similar to the requirements of Rule 13q–1 under the Securities Exchange Act of 1934.

DATES: July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Shehzad K. Niazi, Special Counsel; Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430; or Elliot Staffin, Special Counsel; Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Order Recognizing the Resource Extraction Payment Disclosure Requirements of the European Union, Canada and the U.S. Extractive Industries Transparency Initiative as Substantially Similar to the Requirements of Rule 13q–1 under the Securities Exchange Act of 1934 ("Exchange Act").

June 27, 2016

For the reasons set forth in the adopting release for Rule 13q–1 and the accompanying amendments to Form SD,[1] the Commission hereby finds that the following resource extraction payment disclosure regimes are substantially similar to the disclosure requirements of Rule 13q–1 for purposes of the alternative reporting provisions of paragraph (c) of Item 2.01 of Form SD:

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[1] *See* Section II.J.3.b of Exchange Act Release No. 34–78167 (June 27, 2016).

1. Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (''EU Accounting Directive'') as implemented in a European Union or European Economic Area member country;

2. Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC on the implementation of certain provisions of Directive 2004/109/EC (''EU Transparency Directive'') as implemented in a European Union or European Economic Area member country;

3. Canada's Extractive Sector Transparency Measures Act (''ESTMA''); and

4. The U.S. Extractive Industries Transparency Initiative (''USEITI'').

Issuers are advised that our determination of substantial similarity with respect to each of these four regimes may be subject to reconsideration if there should be any significant modifications to those regimes.

The Commission also hereby finds that this determination is in the public interest and consistent with the protection of investors. Accordingly, it is hereby ordered pursuant to Section 36(a) of the Exchange Act that a resource extraction issuer, as defined in Item 2.01(d) of Form SD, that files a report complying with the reporting requirements of either the EU Accounting Directive or the EU Transparency Directive, in each case as implemented in a European Union or European Economic Area member country, ESTMA, or the USEITI, in accordance with the requirements set forth in paragraph (c) of Item 2.01(c) of Form SD and the conditions specified below, will satisfy its disclosure obligations under Rule 13q–1.

Conditions

1. USEITI reports only satisfy a resource extraction issuer's disclosure obligations under Item 2.01(a) of Form SD for payments made to the Federal Government.

2. A resource extraction issuer may not follow the USEITI submission deadline to the extent it differs from the 150 day deadline in General Instruction B.2 of Form SD and must provide the required payment information on a fiscal year basis.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15677 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0517]

Special Local Regulation; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the Bullhead City River Regatta marine event on the navigable waters of the Colorado River on August 13, 2016. This action is necessary to provide for the safety of the participants, crew, spectators, safety vessels, and general users of the waterway. Our regulation for the annual marine events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) identifies the regulated area for this event. During the enforcement period, no spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels within this regulated area unless authorized by the Captain of the Port, or a designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced from 6 a.m. through 6 p.m. on August 13, 2016 for Item 16 in Table 1 of 33 CFR 100.1102.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 for the Bullhead City River Regatta in 33 CFR 100.1102, Table 1, Item 16 of that section from 6 a.m. to 6 p.m. on August 13, 2016. This action is necessary to provide for the safety of the participants, crew, spectators, safety vessels, and general users of the waterway. Our regulation for the annual marine events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) identifies the regulated entities for this event. Under the provisions of 33 CFR 100.1102, no spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels within this regulated area of the Colorado River unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 100.1102 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 18, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–17765 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0612]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating

schedule that governs the US40–322 (Albany Avenue) Bridge across the NJICW (Inside Thorofare), mile 70.0, at Atlantic City, NJ. The deviation is necessary to facilitate the 2016 6th Annual Atlantic City Triathlon. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 6:30 a.m. to 12:30 p.m. on August 14, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0612] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION: The DelMoSports, LLC, on behalf of the New Jersey Department of Transportation, who owns the US40–322 (Albany Avenue) Bridge across the NJICW (Inside Thorofare), mile 70.0, at Atlantic City, NJ, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.733(f) to ensure the safety of the participants and spectators associated with the 2016 6th Annual Atlantic City Triathlon.

Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 6:30 a.m. to 12:30 p.m. on August 14, 2016. The bridge is a double bascule bridge and has a vertical clearance in the closed-to-navigation position of 10 feet above mean high water.

The NJICW (Inside Thorofare) is used by recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open in case of an emergency. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 21, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–17847 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0735; FRL–9948–73]

Etoxazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of etoxazole in or on soybean seed. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 27, 2016. Objections and requests for hearings must be received on or before September 26, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0735, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0735 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 26, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0735, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 25, 2016 (81 FR 24044) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8398) by Valent U.S.A. Corporation, 1600 Riveira Avenue, Suite 200, Walnut Creek, CA 94596. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the insecticide, etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on soybean at 0.01 parts per million (ppm). A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the level at which the tolerance is being established. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for etoxazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with etoxazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The effects in the etoxazole database show liver toxicity in all species tested (enzyme release, hepatocellular swelling and histopathological indicators), and the severity does not appear to increase with time. In rats only, there were effects on incisors (elongation, whitening, and partial loss of upper and/or lower incisors). There is no evidence of neurotoxicity or immunotoxicity. No toxicity was seen at the limit dose in a 28-day dermal toxicity study in rats. Etoxazole was not mutagenic.

No increased quantitative or qualitative susceptibilities were observed following *in utero* exposure to rats or rabbits in the developmental studies; however, offspring toxicity was more severe (increased pup mortality) than maternal toxicity (increased liver and adrenal weights) at the same dose (158.7 mg/kg/day) in the rat reproduction study indicating increased qualitative susceptibility. Etoxazole is not likely to be carcinogenic based on the lack of carcinogenicity effects in the database.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* on pages 20–23 of the document titled *"Etoxazole: Human Health Risk Assessment in Support of Proposed Use and Tolerances for Residues of Etoxazole in/on Soybean Seed"* in docket ID number EPA–HQ–OPP–2015–0735.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for etoxazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of December 2, 2015 (80 FR 75426) (FRL–9934–60).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in 40 CFR 180.593. EPA assessed dietary exposures from etoxazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for etoxazole;

therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern, 100% crop treated (PCT), and in the absence of empirical data, Dietary Exposure Evaluation Model (DEEM) (ver 7.81) default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that etoxazole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for etoxazole. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for etoxazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of etoxazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) of etoxazole for chronic exposures are estimated to be 4.761 parts per billion (ppb) for surface water and 0.746 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Etoxazole is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found etoxazole to share a common mechanism of toxicity with any other substances, and etoxazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that etoxazole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No increased quantitative or qualitative susceptibilities were observed following *in utero* exposure to rats or rabbits in the developmental studies. There is evidence of increased qualitative offspring susceptibility in the rat reproduction study, but the concern is low since: (1) The effects in pups are well-characterized with a clear NOAEL; (2) the selected endpoints are protective of the doses where the offspring toxicity is observed; and (3) offspring effects occur in the presence of parental toxicity. There are no residual uncertainties for pre-/post-natal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for etoxazole is complete.

ii. There is no indication that etoxazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The observed qualitative postnatal susceptibility is protected for by the selected endpoints.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to etoxazole in drinking water. These assessments will not underestimate the exposure and risks posed by etoxazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, etoxazole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 15% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermedieate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and intermediate-term adverse effect was identified; however, etoxazole is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for etoxazole.

4. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, etoxazole is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to etoxazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass-selective detector (GC/MSD) or GC/nitrogen-phosphorus detector (NPD)) are available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for etoxazole in or on soybean seed.

C. Response to Comments

A comment was submitted by the Center for Food Safety and was primarily concerned about environmental risks, including impacts on pollinators and endangered species, and Agency's assessment of the pesticide product under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The comment did not raise any specific issues concerning the safety of etoxazole under the FFDCA. As such, this comment is not relevant to the Agency's evaluation of safety of the etoxazole tolerances; section 408 of the FFDCA focuses on potential harms to human health and does not permit consideration of effects on the environment.

D. Revisions to Petitioned-For Tolerances

The proposed tolerance of 0.01 ppm is below the validated limit of quantification (LOQ) of 0.02 ppm for the analytical method and is therefore being raised to the LOQ level.

V. Conclusion

Therefore, a tolerance is established for residues of etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on soybean, seed at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 14, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.593, add alphabetically the commodity "Soybean, seed" to the table in paragraph (a) to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) * * *

Commodity	Parts (per million)
* * * *	*
Soybean, seed	0.02
* * * *	*

* * * * *

[FR Doc. 2016–17786 Filed 7–26–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8439]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VI				
Arkansas:				
Clay County, Unincorporated Areas	050423	September 19, 1979, Emerg; March 1, 1990, Reg; August 3, 2016, Susp.	Aug. 3, 2016	Aug. 3, 2016.
Corning, City of, Clay County	050030	November 1, 1974, Emerg; July 2, 1980, Reg; August 3, 2016, Susp.	......do*	Do.
Knobel, Town of, Clay County	050032	July 15, 1975, Emerg; June 25, 1976, Reg; August 3, 2016, Susp.	......do	Do.
McDougal, City of, Clay County	050033	October 8, 1975, Emerg; June 1, 1987, Reg; August 3, 2016, Susp.	......do	Do.
Peach Orchard, City of, Clay County	050034	May 29, 1975, Emerg; March 25, 1985, Reg; August 3, 2016, Susp.	......do	Do.
Piggott, City of, Clay County	050035	May 5, 1975, Emerg; August 4, 1987, Reg; August 3, 2016, Susp.	......do	Do.
Pollard, City of, Clay County	050036	April 11, 1975, Emerg; August 31, 1982, Reg; August 3, 2016, Susp.	......do	Do.
Rector, City of, Clay County	050366	March 15, 1976, Emerg; August 31, 1982, Reg; August 3, 2016, Susp.	......do	Do.
Saint Francis, City of, Clay County	050037	April 22, 1975, Emerg; September 14, 1982, Reg; August 3, 2016, Susp.	......do	Do.
Success, Town of, Clay County	050289	December 12, 1975, Emerg; August 31, 1982, Reg; August 3, 2016, Susp.	......do	Do.
Region VII				
Nebraska:				
Colon, Village of, Saunders County	310290	N/A, Emerg; September 21, 2010, Reg; August 3, 2016, Susp.	......do	Do.
Ithaca, Village of, Saunders County	310198	November 12, 1975, Emerg; May 1, 1987, Reg; August 3, 2016, Susp.	......do	Do.
Mead, Village of, Saunders County	310301	August 5, 1976, Emerg; September 24, 1984, Reg; August 3, 2016, Susp.	......do	Do.
Saunders County, Unincorporated Areas.	310195	April 6, 1973, Emerg; December 1, 1978, Reg; August 3, 2016, Susp.	......do	Do.
Wahoo, City of, Saunders County	310204	August 25, 1972, Emerg; December 1, 1977, Reg; August 3, 2016, Susp.	......do	Do.
Weston, Village of, Saunders County	310205	October 24, 1979, Emerg; July 3, 1985, Reg; August 3, 2016, Susp.	......do	Do.
Region IX				
California:				
American Canyon, City of, Napa County.	060755	N/A, Emerg; January 11, 1994, Reg; August 3, 2016, Susp.	......do	Do.
Benicia, City of, Solano County	060368	May 28, 1975, Emerg; May 31, 1977, Reg; August 3, 2016, Susp.	......do	Do.
Napa, City of, Napa County	060207	July 25, 1975, Emerg; September 5, 1979, Reg; August 3, 2016, Susp.	......do	Do.
Napa County, Unincorporated Areas	060205	January 29, 1971, Emerg; February 1, 1980, Reg; August 3, 2016, Susp.	......do	Do.

*......do and Do. = Ditto.
Code for reading third column: Emerg—Emergency; Reg—Regular; Susp—Suspension.

Dated: July 11, 2016

Michael M Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency

[FR Doc. 2016–17732 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8437]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Maine:				
Bald Island, Hancock County	231011	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	July 20, 2016	July 20, 2016.
Bar Harbor, Town of, Hancock County	230064	May 7, 1975, Emerg; May 2, 1991, Reg; July 20, 2016, Susp.	......do*	Do.
Bar Island, Hancock County	231000	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Beach Island, Hancock County	231025	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Bear Island, Hancock County	231019	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Big Barred Island, Hancock County	231016	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Birch Island, Hancock County	230997	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Blue Hill, Town of, Hancock County	230274	April 1, 1976, Emerg; May 3, 1990, Reg; July 20, 2016, Susp.	......do	Do.
Bradbury Island, Hancock County	231005	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Brooklin, Town of, Hancock County	230275	March 8, 1985, Emerg; March 1, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Brooksville, Town of, Hancock County	230276	June 11, 1976, Emerg; May 15, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Bucksport, Town of, Hancock County	230065	October 17, 1975, Emerg; November 4, 1988, Reg; July 20, 2016, Susp.	......do	Do.
Butter Island, Hancock County	231015	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Castine, Town of, Hancock County	230277	July 24, 1975, Emerg; May 2, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Chain Links Islands—North, Hancock County.	231052	July 29, 2014, Emerg; N/A, Reg; July 20, 2016, Susp.	......do	Do.
Chain Links Islands—South, Hancock County.	231053	July 29, 2014, Emerg; N/A, Reg; July 20, 2016, Susp.	......do	Do.
Channel Rock Island, Hancock County	231029	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Colt Head Island, Hancock County	231027	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Compass Island, Hancock County	231022	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Cranberry Isles, Town of, Hancock County.	230278	June 30, 1976, Emerg; June 17, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Crow Island, Hancock County	231006	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Dedham, Town of, Hancock County	230279	November 19, 2010, Emerg; March 1, 2011, Reg; July 20, 2016, Susp.	......do	Do.
Deer Isle, Town of, Hancock County	230280	April 2, 1976, Emerg; May 2, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Eagle Island, Hancock County	231008	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Eastbrook, Town of, Hancock County	230281	June 14, 1976, Emerg; March 1, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Eaton Island, Hancock County	231001	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Ellsworth, City of, Hancock County	230066	January 15, 1975, Emerg; November 4, 1988, Reg; July 20, 2016, Susp.	......do	Do.
Fletchers Landing, Township of, Hancock County.	230458	March 19, 1975, Emerg; October 1, 1986, Reg; July 20, 2016, Susp.	......do	Do.
Fling Island, Hancock County	231012	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Franklin, Town of, Hancock County	230282	February 4, 1976, Emerg; July 16, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Frenchboro, Town of, Hancock County	230594	April 25, 1975, Emerg; April 17, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Gouldsboro, Town of, Hancock County	230283	July 20, 1976, Emerg; June 4, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Grass Ledge Island, Hancock County	231017	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Great Spruce Head Island, Hancock County.	231018	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Hancock, Town of, Hancock County	230284	June 1, 1976, Emerg; June 3, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Hardhead Island, Hancock County	231007	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Hog Island, Hancock County	230994	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Horsehead Island, Hancock County	231024	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Inner Porcupine Island, Hancock County.	231009	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Lamoine, Town of, Hancock County	230285	June 11, 1975, Emerg; May 2, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Little Barred Island, Hancock County	231054	July 29, 2014, Emerg; N/A, Reg; July 20, 2016, Susp.	......do	Do.
Little Marshall Island, Hancock County	231031	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Little Spruce Head, Hancock County	231023	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Mariaville, Town of, Hancock County	230286	June 30, 1997, Emerg; October 1, 2005, Reg; July 20, 2016, Susp.	......do	Do.
Marshall Island, Hancock County	231030	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Mount Desert, Town of, Hancock County.	230287	December 23, 1976, Emerg; August 2, 1990, Reg; July 20, 2016, Susp.	......do	Do.
Orland, Town of, Hancock County	230288	June 11, 1975, Emerg; February 4, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Otis, Town of, Hancock County	230289	April 24, 1998, Emerg; April 1, 2009, Reg; July 20, 2016, Susp.	......do	Do.
Outer Porcupine Island, Hancock County.	231010	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Peak Island, Hancock County	231055	July 29, 2014, Emerg; N/A, Reg; July 20, 2016, Susp.	......do	Do.
Penobscot, Town of, Hancock County	230290	June 14, 1976, Emerg; July 16, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Pickering Island, Hancock County	231002	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Pond Island, Hancock County	230993	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Pumpkin Island, Hancock County	230996	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Resolution Island, Hancock County	231028	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Scott Island, Hancock County	230998	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Scrag Island, Hancock County	231020	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Sedgwick, Town of, Hancock County	230291	December 23, 1976, Emerg; February 4, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Sheep Island, Hancock County	230999	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Sloop Island, Hancock County	231013	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Sloop Island Ledge, Hancock County	231014	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Sorrento, Town of, Hancock County	230292	November 17, 1976, Emerg; September 4, 1985, Reg; July 20, 2016, Susp.	......do	Do.
Southwest Harbor, Town of, Hancock County.	230293	January 13, 1976, Emerg; June 3, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Spectacle Island, Hancock County	230995	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Stonington, Town of, Hancock County	230294	April 14, 1977, Emerg; June 3, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Sugarloaf, Hancock County	231056	July 29,1974, Emerg; N/A, Reg; July 20, 2016, Susp.	......do	Do.
Sullivan, Town of, Hancock County	230295	April 15, 1976, Emerg; September 4, 1985, Reg; July 20, 2016, Susp.	......do	Do.
Surry, Town of, Hancock County	230296	April 30, 1979, Emerg; May 2, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Swan's Island, Town of, Hancock County.	230297	July 16, 1976, Emerg; March 1, 1987, Reg; July 20, 2016, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
T07 SD, Township of, Hancock County	230598	April 25, 1975, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Tremont, Town of, Hancock County	230298	January 17, 1977, Emerg; August 2, 1990, Reg; July 20, 2016, Susp.	......do	Do.
Trenton, Town of, Hancock County	230299	October 7, 1976, Emerg; August 2, 1990, Reg; July 20, 2016, Susp.	......do	Do.
Two Bush Island, Hancock County	231003	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Waltham, Town of, Hancock County	230301	September 26, 1977, Emerg; July 2, 1987, Reg; July 20, 2016, Susp.	......do	Do.
Western Island, Hancock County	230992	April 4, 1979, Emerg; April 30, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Winter Harbor, Town of, Hancock County.	230302	March 31, 1975, Emerg; May 15, 1991, Reg; July 20, 2016, Susp.	......do	Do.
Massachusetts:				
Aquinnah, Town of, Dukes County	250070	September 7, 1976, Emerg; October 15, 1985, Reg; July 20, 2016, Susp.	......do	Do.
Gosnold, Town of, Dukes County	250071	September 29, 1977, Emerg; June 4, 1980, Reg; July 20, 2016, Susp.	......do	Do.
Tisbury, Town of, Dukes County	250073	June 20, 1975, Emerg; June 15, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Region II				
New Jersey:				
East Windsor, Township of, Mercer County.	340244	December 19, 1973, Emerg; March 16, 1983, Reg; July 20, 2016, Susp.	......do	Do.
Ewing, Township of, Mercer County	345294	October 2, 1970, Emerg; January 30, 1976, Reg; July 20, 2016, Susp.	......do	Do.
Hamilton, Township of, Mercer County	340246	December 3, 1971, Emerg; June 15, 1982, Reg; July 20, 2016, Susp.	......do	Do.
Hightstown, Borough of, Mercer County	340247	June 9, 1972, Emerg; March 15, 1977, Reg; July 20, 2016, Susp.	......do	Do.
Hopewell, Borough of, Mercer County ..	340248	February 22, 1974, Emerg; February 15, 1978, Reg; July 20, 2016, Susp.	......do	Do.
Hopewell, Township of, Mercer County	345298	April 9, 1971, Emerg; June 15, 1973, Reg; July 20, 2016, Susp.	......do	Do.
Lawrence, Township of, Mercer County	340250	June 16, 1972, Emerg; December 1, 1977, Reg; July 20, 2016, Susp.	......do	Do.
Pennington, Borough of, Mercer County	340251	April 12, 1974, Emerg; June 25, 1976, Reg; July 20, 2016, Susp.	......do	Do.
Princeton, Municipality of, Mercer County.	340252	September 15, 1972, Emerg; December 4, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Robbinsville, Township of, Mercer County.	340255	May 28, 1974, Emerg; September 29, 1978, Reg; July 20, 2016, Susp.	......do	Do.
Trenton, City of, Mercer County	345325	January 15, 1971, Emerg; December 3, 1971, Reg; July 20, 2016, Susp.	......do	Do.
West Windsor, Township of, Mercer County.	340256	October 17, 1974, Emerg; May 1, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Region III				
Maryland:				
Easton, Town of, Talbot County	240067	October 9, 1974, Emerg; September 28, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Oxford, Town of, Talbot County	240068	March 27, 1974, Emerg; September 28, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Saint Michaels, Town of, Talbot County	240069	February 7, 1975, Emerg; November 1, 1984, Reg; July 20, 2016, Susp.	......do	Do.
Talbot County, Unincorporated Areas ...	240066	September 6, 1974, Emerg; May 15, 1985, Reg; July 20, 2016, Susp.	......do	Do.
Trappe, Town of, Talbot County	240108	N/A, Emerg; August 15, 2006, Reg; July 20, 2016, Susp.	......do	Do.
Region VII				
Missouri:				
Marion County, Unincorporated Areas ..	290222	June 28, 1973, Emerg; May 16, 1977, Reg; July 20, 2016, Susp.	......do	Do.

*......do and Do. = ditto.
Code for reading third column: Emerg—Emergency; Reg—Regular; Susp—Suspension

Dated: July 1, 2016

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency

[FR Doc. 2016–17741 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8441]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New Jersey:				
Audubon, Borough of, Camden County	340121	July 3, 1975, Emerg; October 13, 1978, Reg; August 17, 2016, Susp	Aug. 17, 2016 ...	Aug. 17, 2016.
Bellmawr, Borough of, Camden County	340124	August 1, 1974, Emerg; February 15, 1980, Reg; August 17, 2016, Susp	......do	Do.
Brooklawn, Borough of, Camden County.	340127	July 16, 1975, Emerg; September 14, 1979, Reg; August 17, 2016, Susp	......do	Do.
Camden, City of, Camden County	340128	May 16, 1975, Emerg; December 1, 1981, Reg; August 17, 2016, Susp	......do	Do.
Cherry Hill, Township of, Camden County.	340129	January 14, 1972, Emerg; August 15, 1978, Reg; August 17, 2016, Susp	......do	Do.
Collingswood, Borough of, Camden County.	340131	April 9, 1973, Emerg; July 17, 1978, Reg; August 17, 2016, Susp	......do	Do.
Deptford, Township of, Gloucester County.	340199	June 16, 1975, Emerg; November 17, 1982, Reg; August 17, 2016, Susp	......do	Do.
East Greenwich, Township of, Gloucester County.	340200	March 27, 1975, Emerg; December 1, 1982, Reg; August 17, 2016, Susp	......do	Do.
Gloucester, City of, Camden County	340132	December 19, 1974, Emerg; September 14, 1979, Reg; August 17, 2016, Susp	......do	Do.
Gloucester, Township of, Camden County.	340133	July 24, 1975, Emerg; December 1, 1982, Reg; August 17, 2016, Susp	......do	Do.
Greenwich, Township of, Gloucester County.	340204	April 18, 1973, Emerg; September 16, 1982, Reg; August 17, 2016, Susp	......do	Do.
Haddon, Township of, Camden County	340134	April 12, 1974, Emerg; March 1, 1982, Reg; August 17, 2016, Susp	......do	Do.
Haddon Heights, Borough of, Camden County.	340136	May 27, 1975, Emerg; August 26, 1977, Reg; August 17, 2016, Susp	......do	Do.
Logan, Township of, Gloucester County	340206	June 29, 1976, Emerg; January 6, 1983, Reg; August 17, 2016, Susp	......do	Do.
Mantua, Township of, Gloucester County.	340207	May 8, 1975, Emerg; November 3, 1982, Reg; August 17, 2016, Susp	......do	Do.
Mount Ephraim, Borough of, Camden County.	340140	April 15, 1975, Emerg; September 1, 1978, Reg; August 17, 2016, Susp	......do	Do.
National Park, Borough of, Gloucester County.	340209	January 3, 1975, Emerg; September 2, 1982, Reg; August 17, 2016, Susp	......do	Do.
Oaklyn, Borough of, Camden County ...	340141	September 16, 1975, Emerg; November 3, 1978, Reg; August 17, 2016, Susp	......do	Do.
Paulsboro, Borough of, Gloucester County.	340210	May 13, 1975, Emerg; September 2, 1982, Reg; August 17, 2016, Susp	......do	Do.
Pennsauken, Township of, Camden County.	340142	January 28, 1972, Emerg; April 15, 1977, Reg; August 17, 2016, Susp	......do	Do.
Runnemede, Borough of, Camden County.	340144	August 7, 1973, Emerg; January 2, 1980, Reg; August 17, 2016, Susp	......do	Do.
Swedesboro, Borough of, Gloucester County.	340519	July 23, 1975, Emerg; July 5, 1982, Reg; August 17, 2016, Susp	......do	Do.
Washington, Township of, Gloucester County.	340213	February 1, 1974, Emerg; November 17, 1982, Reg; August 17, 2016, Susp	......do	Do.
Wenonah, Borough of, Gloucester County.	340503	December 19, 1973, Emerg; May 11, 1979, Reg; August 17, 2016, Susp	......do	Do.
West Deptford, Township of, Gloucester County.	340214	December 22, 1972, Emerg; June 1, 1982, Reg; August 17, 2016, Susp	......do	Do.
Westville, Borough of, Gloucester County.	340215	July 2, 1975, Emerg; May 1, 1980, Reg; August 17, 2016, Susp	......do	Do.
Woodbury, City of, Gloucester County ..	340216	August 6, 1975, Emerg; May 11, 1979, Reg; August 17, 2016, Susp	......do	Do.
Woodbury Heights, Borough of, Gloucester County.	340550	January 21, 1976, Emerg; May 18, 1979, Reg; August 17, 2016, Susp	......do	Do.
Woodlynne, Borough of, Camden County.	340149	June 24, 1975, Emerg; December 1, 1981, Reg; August 17, 2016, Susp	......do	Do.
Woolwich, Township of, Gloucester County.	340217	May 13, 1975, Emerg; September 2, 1982, Reg; August 17, 2016, Susp	......do	Do.
Region III				
West Virginia:				
Kermit, Town of, Mingo County	540136	December 1, 1972, Emerg; March 1, 1978, Reg; August 17, 2016, Susp	......do	Do.
Matewan, Town of, Mingo County	545538	February 3, 1970, Emerg; February 3, 1970, Reg; August 17, 2016, Susp	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Williamson, City of, Mingo County	540138	April 2, 1975, Emerg; January 16, 1981, Reg; August 17, 2016, Susp	......do	Do.
Region IV				
Alabama:				
Argo, City of, Jefferson and Saint Clair County.	010450	N/A, Emerg; April 2, 2013, Reg; August 17, 2016, Susp	......do	Do.
Ashville, City of, Saint Clair County	010186	June 5, 1975, Emerg; April 17, 1987, Reg; August 17, 2016, Susp	......do	Do.
Margaret, City of, Saint Clair County	010393	January 3, 2012, Emerg; June 19, 2012, Reg; August 17, 2016, Susp	......do	Do.
Moody, City of, Saint Clair County	010187	May 21, 1975, Emerg; July 4, 1989, Reg; August 17, 2016, Susp	......do	Do.
Odenville, City of, Saint Clair County	010188	July 11, 1975, Emerg; August 5, 1986, Reg; August 17, 2016, Susp	......do	Do.
Pell City, City of, Saint Clair County	010189	May 5, 1975, Emerg; July 4, 1989, Reg; August 17, 2016, Susp	......do	Do.
Ragland, Town of, Saint Clair County	010190	June 26, 1975, Emerg; June 3, 1986, Reg; August 17, 2016, Susp	......do	Do.
Riverside, City of, Saint Clair County	010288	June 6, 1977, Emerg; August 19, 1986, Reg; August 17, 2016, Susp	......do	Do.
Springville, City of, Saint Clair County	010289	April 16, 1975, Emerg; August 19, 1986, Reg; August 17, 2016, Susp	......do	Do.
Saint Clair County, Unincorporated Areas.	010290	February 9, 1979, Emerg; September 29, 1989, Reg; August 17, 2016, Susp	......do	Do.
Steele, Town of, Saint Clair County	010291	August 25, 1977, Emerg; September 18, 1985, Reg; August 17, 2016, Susp	......do	Do.
Trussville, City of, Jefferson and Saint Clair Counties.	010133	June 26, 1975, Emerg; November 18, 1981, Reg; August 17, 2016, Susp	......do	Do.
Region V				
Illinois:				
Ashton, Village of, Lee County	170415	May 2, 1975, Emerg; April 30, 1986, Reg; August 17, 2016, Susp	......do	Do.
Byron, City of, Ogle County	170526	July 21, 1975, Emerg; December 4, 1984, Reg; August 17, 2016, Susp	......do	Do.
Dixon, City of, Lee County	170417	March 3, 1975, Emerg; April 15, 1988, Reg; August 17, 2016, Susp	......do	Do.
Hillcrest, Village of, Ogle County	170956	May 23, 1994, Emerg; December 17, 2010, Reg; August 17, 2016, Susp	......do	Do.
Lee County, Unincorporated Areas	170413	June 6, 1975, Emerg; April 15, 1988, Reg; August 17, 2016, Susp	......do	Do.
Nelson, Village of, Lee County	170418	September 30, 1976, Emerg; April 15, 1988, Reg; August 17, 2016, Susp	......do	Do.
Ogle County, Unincorporated Areas	170525	August 17, 1973, Emerg; April 5, 1988, Reg; August 17, 2016, Susp	......do	Do.
Oregon, City of, Ogle County	170530	April 30, 1975, Emerg; October 15, 1981, Reg; August 17, 2016, Susp	......do	Do.
Rochelle, City of, Lee and Ogle Counties.	170532	March 7, 1975, Emerg; August 19, 1986, Reg; August 17, 2016, Susp	......do	Do.
Steward, Village of, Lee County	170420	October 10, 1975, Emerg; September 1, 1987, Reg; August 17, 2016, Susp	......do	Do.

*......do and Do. = ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 11, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–17728 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2016–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Onondaga County, New York (All Jurisdictions) Docket Nos.: FEMA–B–1002 and B–1076			
DeRuyter Reservoir	Shoreline of DeRuyter Reservoir within Onondaga County	+1282	Town of Fabius.
Geddes Brook	Approximately 245 feet downstream of Gere Lock Road	+381	Village of Solvay.
	At Gere Lock Road bridge	+396	
Harbor Brook	Approximately 300 feet upstream of the Onondaga Lake confluence.	+372	City of Syracuse, Town of Geddes, Town of Onondaga.
	Approximately 860 feet upstream of State Route 173	+782	
Limestone Creek	Approximately 2,990 feet upstream of North Manlius Road	+399	Town of Manlius, Village of Fayetteville, Village of Manlius, Village of Minoa.
	Approximately 160 feet upstream of Pompey Center Road	+725	
Meadow Brook	At the Old Erie Canal Feeder confluence	+429	City of Syracuse, Town of Dewitt.
	Approximately 220 feet downstream of Meadow Brook Drive.	+541	
Ninemile Creek	Approximately 2,150 feet upstream of the Onondaga Lake confluence.	+371	Town of Camillus, Town of Geddes, Town of Marcellus, Village of Camillus, Village of Marcellus.
	Approximately 350 feet upstream of Otisco Valley Road	+781	
Onondaga Creek	Just upstream of Bear Street	+371	City of Syracuse, Town of Onondaga.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1.1 miles upstream of Dorwin Avenue	+431	
Otisco Lake	Entire shoreline of Otisco Lake within the Towns of Marcellus, Spafford and Otisco.	+789	Town of Marcellus, Town of Otisco, Town of Spafford.
Skaneateles Creek	Approximately 1.4 miles downstream of Interstate 90	+385	Town of Elbridge, Town of Skaneateles, Village of Elbridge, Village of Jordan, Village of Skaneateles.
	Approximately 960 feet upstream of Kelley Street	+860	
Thompson Brook	At South Bay Road Bridge	+382	Village of North Syracuse.
	Approximately 265 feet upstream of I–481 ramp	+383	
Tully Lake	Shoreline of Tully Lake within Onondaga County	+1195	Town of Tully.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES:

City of Syracuse
Maps are available for inspection at City Hall, 233 East Washington Street, Syracuse, NY 13202.

Town of Camillus
Maps are available for inspection at the Camillus Municipal Building, 4600 West Genesee Street, Syracuse, NY 13219.

Town of Dewitt
Maps are available for inspection at the Dewitt Town Hall, 5400 Butternut Drive, East Syracuse, NY 13057.

Town of Elbridge
Maps are available for inspection at the Elbridge Municipal Offices, 5 State Route 31, Jordan, NY 13080.

Town of Fabius
Maps are available for inspection at the Town Hall, 7786 Main Street, Fabius, NY 13063.

Town of Geddes
Maps are available for inspection at the Geddes Town Hall, 1000 Woods Road, Solvay, NY 13209.

Town of Manlius
Maps are available for inspection at the Manlius Town Hall, 301 Brooklea Drive, Fayetteville, NY 13066.

Town of Marcellus
Maps are available for inspection at the Town Hall, 24 East Main Street, Marcellus, NY 13108.

Town of Onondaga
Maps are available for inspection at the Onondaga Town Hall, 5020 Ball Road, Syracuse, NY 13215.

Town of Otisco
Maps are available for inspection at the Otisco Town Hall, 1924 Barker Street, Tully, NY 13159.

Town of Skaneateles
Maps are available for inspection at the Town Hall, 24 Jordan Street, Skaneateles, NY 13152.

Town of Spafford
Maps are available for inspection at the Spafford Town Hall, 1984 State Route 174, Skaneateles, NY 13152.

Town of Tully
Maps are available for inspection at the Municipal Building, 5833 Meetinghouse Road, Tully, NY 13159.

Village of Camillus
Maps are available for inspection at the Village Hall, 37 Main Street, Camillus, NY 13031.

Village of Elbridge
Maps are available for inspection at the Village Hall, 210 West Main Street, Elbridge, NY 13060.

Village of Fayetteville
Maps are available for inspection at the Village Hall, 425 East Genesee Street, Fayetteville, NY 13066.

Village of Jordan
Maps are available for inspection at the Village Office, 7 Mechanic Street, Jordan, NY 13080.

Village of Manlius
Maps are available for inspection at the Village Centre, One Arkie Albanese Avenue, Manlius, NY 13104.

Village of Marcellus
Maps are available for inspection at the Village Office, 6 Slocombe Avenue, Marcellus, NY 13108.

Village of Minoa
Maps are available for inspection at the Village Office, 240 North Main Street, Minoa, NY 13116.

Village of North Syracuse
Maps are available for inspection at the Village Hall, 600 South Bay Road, North Syracuse, NY 13212.

Village of Skaneateles
Maps are available for inspection at the Village Hall, 26 Fennell Street, Skaneateles, NY 13152.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Village of Solvay Maps are available for inspection at the Village Hall, 1100 Woods Road, Solvay, NY 13209.			

[FR Doc. 2016–17731 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 86–285; FCC 16–87]

Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission makes changes to the Commission's rules, and amends its Schedule of Application Fees to adjust its fees for processing applications and other filings. Section 8(a) of the Communications Act of 1934, as amended ("the Act"), requires the Commission to "assess and collect application fees at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to" section 8(b). Section 8(b)(1) requires that the Schedule of Application Fees "be reviewed by the Commission every two years after October 1, 1991, and adjusted by the Commission to reflect changes in the Consumer Price Index." As required by section 8(b)(1), this Order increases application fees to reflect the net change in the Consumer Price Index for all Urban Consumers ("CPI–U") of 1.8 percent.

DATES: Effective August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, FCC 16–87, GEN Docket No. 86–285, adopted on July 6, 2016 and released on July 7, 2016.

Administrative Matters

Final Paperwork Reduction Act of 1995 Analysis

1. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

2. The Commission will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Introduction and Executive Summary

3. By this Order, the Commission makes rule changes to Part 1 of the Commission's rules, and amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.,* as listed in the Appendix, to adjust its fees for processing applications and other filings. Section 8(a) of the Communications Act of 1934, as amended ("the Act"), requires the Commission to "assess and collect application fees at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to" section 8(b).[1] Section 8(g) contains the Schedule of Charges for a broad range of application categories as well as procedures for modifying and collecting these charges. Section 8(b)(1) requires that the Schedule of Application Fees "be reviewed by the Commission every two years after October 1, 1991, and adjusted by the Commission to reflect changes in the Consumer Price Index." As required by section 8(b)(1), this Order increases application fees to reflect the net change in the Consumer Price Index for all Urban Consumers ("CPI–U") of 1.8 percent, an increase of 4.292 index points calculated from October 2013 (233.546) to October 2015 (237.838).[2] The adjustments comply with the statutory formula set forth in section 8(b).

4. The methodology and timing of adjustments to application fees are prescribed by statute at 47 U.S.C. 158(b). Because our action implementing the statute leaves us no discretion, prior notice and comment is unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). This *Order* is also exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* pursuant to 5 U.S.C. 601(2). Copies of this Order will be sent to Congress and the Comptroller General in compliance with the Congressional Review Act, 5 U.S.C. 801 *et seq.* Notification of the fee adjustments made in this Order will be published in the **Federal Register**.

Ordering Clauses

5. Accordingly, *it is ordered,* that, pursuant to sections 1, 4(i), 4(j), and 8 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 158, the rule changes specified herein *are adopted* and the Schedule of Application Fees, 47 CFR 1.1102 *et seq., is amended* as set forth in the attached table of fees.

6. *It is further ordered* that the rule changes and amendment to the Schedule of Application Fees made herein shall become effective 30 days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

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[1] 47 U.S.C. 158(a).

[2] Application fees are calculated based upon the process set forth in 47 U.S.C. 158(b)(1). The increase in the CPI–U between October 2013 (the month used to calculate the last CPI–U adjustment of the Schedule of Application Fees) and October 2015 is 4.292 index points, a 1.8 percent increase. Section 8(b)(1) prescribes that increases or decreases in application fees are to be "determined by the net change in the Consumer Price Index since the date of enactment of this section," *i.e.,* since December 1989. The actual calculation of fees is based on index points that are averaged over a time period beginning in December 1989. *See* Bureau of Labor Statistics CPI–U Index, *http://www.bls.gov/cpi/cpid1511.pdf* (showing a CPI–U Index of 233.546 for October 2013 and 237.838 for October 2015).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Schedule of Application Fees

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURES

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

In the table below, the amounts appearing in the column labeled "Fee Amount" are for application fees only. Those services designated in the table below with an asterisk (*) in the column labeled "Payment Type Code" also have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to the FY 2014 Wireless Telecommunications Fee Filing Guide (updated and effective 9/17/15) for the corresponding regulatory fee amount located at *https://www.fcc.gov/document/wtb-application-fee-filing-guide-effective-september-17-2015.* For additional guidance, please refer to § 1.1152 of the Commission's rules.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Wireless Bureau Applications, P.O. Box 979097, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Marine Coast:			
a. New; Renewal/Modification	601 & 159		PBMR *
	601 & 159	135.00	PBMM
b. Modification; Public Coast CMRS; Non-Profit	601 & 159	135.00	PBMM
c. Assignment of Authorization	603 & 159	135.00	PBMM
d. Transfer of Control	603 & 159	70.00	PATM
Spectrum Leasing for Public Coast	608 & 159	70.00	PATM
e. Duplicate License	601 & 159	70.00	PADM
f. Special Temporary Authority	601 & 159	190.00	PCMM
g. Renewal Only	601 & 159		PBMR *
	601 & 159	135.00	PBMM
h. Renewal (Electronic Filing)	601 & 159		PBMR *
	601 & 159	135.00	PBMM
i. Renewal Only (Non-Profit; CMRS)	601 & 159	135.00	PBMM
j. Renewal (Electronic Filing) Non-profit, CMRS	601 & 159	135.00	PBMM
k. Rule Waiver	601, 603, 608 or 609–T & 159.	200.00	PDWM
l. Modification for Spectrum Leasing for Public Coast Stations.	608 & 159	135.00	PBMM
m. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	PATM
2. Aviation Ground:			
a. New; Renewal/Modification	601 & 159		PBVR *
	601 & 159	135.00	PBVM
b. Modification; Non-Profit	601 & 159	135.00	PBVM
c. Assignment of Authorization	603 & 159	135.00	PBVM
d. Transfer of Control	603 & 159	70.00	PATM
e. Duplicate License	601 & 159	70.00	PADM
f. Special Temporary Authority	601 & 159	190.00	PCVM
g. Renewal Only	601 & 159		PBVR *
	601 & 159	135.00	PBVM
h. Renewal (Electronic Filing)	601 & 159		PBVR *
	601 & 159	135.00	PBVM
i. Renewal Only Non-Profit	601 & 159	135.00	PBVM
j. Renewal Non-Profit (Electronic Filing)	601 & 159	135.00	PBVM
k. Rule Waiver	601 or 603 & 159	200.00	PDWM
3. Ship:			
a. New; Renewal/Modification; Renewal Only	605 & 159		PASR *
	605 & 159	70.00	PASM
b. New; Renewal/Modification; Renewal Only (Electronic Filing).	605 & 159		PASR *
	605 & 159	70.00	PASM
c. Renewal Only Non-profit	605 & 159	70.00	PASM
d. Renewal Only Non-profit (Electronic Filing)	605 & 159	70.00	PASM
e. Modification; Non-profit	605 & 159	70.00	PASM
f. Modification; Non-profit (Electronic Filing)	605 & 159	70.00	PASM
g. Duplicate License	605 & 159	70.00	PADM
h. Duplicate License (Electronic Filing)	605 & 159	70.00	PADM
i. Exemption from Ship Station Requirements	605 & 159	200.00	PDWM
j. Rule Waiver	605 & 159	200.00	PDWM
k. Exemption from Ship Station Requirements (Electronic Filing).	605 & 159	200.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	200.00	PDWM
4. Aircraft:			

Service	FCC Form No.	Fee amount ($)	Payment type code
a. New; Renewal/Modification	605 & 159		PAAR*
	605 & 159	70.00	PAAM
b. New; Renewal/Modification (Electronic Filing)	605 & 159		PAAR*
	605 & 159	70.00	PAAM
c. Modification; Non-Profit	605 & 159	70.00	PAAM
d. Modification Non-Profit (Electronic Filing)	605 & 159	70.00	PAAM
e. Renewal Only	605 & 159		PAAR*
	605 & 159	70.00	PAAM
f. Renewal (Electronic Filing)	605 & 159		PAAR*
	605 & 159	70.00	PAAM
g. Renewal Only Non-Profit	605 & 159	70.00	PAAM
h. Renewal; Renewal/Modification Non-Profit (Electronic Filing).	605 & 159	70.00	PAAM
i. Duplicate License	605 & 159	70.00	PADM
j. Duplicate License (Electronic Filing)	605 & 159	70.00	PADM
k. Rule Waiver	603, 605 & 159	200.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	200.00	PDWM
5. Private Operational Fixed Microwave and Private DEMS:			
a. New; Renewal/Modification	601 & 159		PEOR*
	601 & 159	295.00	PEOM
b. New; Renewal/Modification (Electronic Filing)	601 & 159		PEOR*
	601 & 159	295.00	PEOM
c. Modification; Consolidate Call Signs; Non-Profit	601 & 159	295.00	PEOM
d. Modification; Consolidate Call Signs; Non-Profit (Electronic Filing).	601 & 159	295.00	PEOM
e. Renewal Only	601 & 159		PEOR*
	601 & 159	295.00	PEOM
f. Renewal (Electronic Filing)	601 & 159		PEOR*
	601 & 159	295.00	PEOM
g. Renewal Only Non-Profit	601 & 159	295.00	PEOM
h. Renewal Non-Profit (Electronic Filing)	601 & 159	295.00	PEOM
i. Assignment	603 & 159	295.00	PEOM
j. Assignment (Electronic Filing)	603 & 159	295.00	PEOM
k. Transfer of Control; Spectrum Leasing	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
l. Transfer of Control; Spectrum Leasing (Electronic Filing)	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
m. Duplicate License	601 & 159	70.00	PADM
n. Duplicate License (Electronic Filing)	601 & 159	70.00	PADM
o. Special Temporary Authority	601 & 159	70.00	PAOM
p. Special Temporary Authority (Electronic Filing)	601 & 159	70.00	PAOM
q. Rule Waiver	601, 603 or	200.00	PDWM
	608, 609T & 159	200.00	PDWM
r. Rule Waiver (Electronic Filing)	601, 603 or	200.00	PDWM
	608, 609T & 159	200.00	PDWM
s. Modification for Spectrum Leasing	608 & 159	295.00	PEOM
t. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	295.00	PEOM
u. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	PATM
6. Land Mobile PMRS; Intelligent Transportation Service:			
a. New or Renewal/Modification (Frequencies below 470 MHz (except 220 MHz)) 902–928 MHz & RS.	601 & 159		PALR*
	601 & 159	70.00	PALM
b. New; Renewal/Modification (Frequencies below 470 MHz (except 220 MHz)) (Electronic Filing).	601 & 159		PALR*
	601 & 159	70.00	PALM
c. New; Renewal/Modification (Frequencies 470 MHz and above and 220 MHz Local).	601 & 159		PALS*
	601 & 159	70.00	PALM
d. New; Renewal/Modification (Frequencies 470 MHz and above and 220 MHz Local) (Electronic Filing).	601 & 159		PALS*
	601 & 159	70.00	PALM
e. New; Renewal/Modification (220 MHz Nationwide)	601 & 159		PALT*
	601 & 159	70.00	PALM
f. New; Renewal/Modification (220 MHz Nationwide) (Electronic Filing).	601 & 159		PALT*
	601 & 159	70.00	PALM
g. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS.	601 & 159	70.00	PALM
h. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS (Electronic Filing).	601 & 159	70.00	PALM
i. Renewal Only	601 & 159		PALR*
	601 & 159	70.00	PALM
	601 & 159		PALS*
	601 & 159	70.00	PALM
	601 & 159		PALT*
	601 & 159	70.00	PALM
j. Renewal (Electronic Filing)	601 & 159		PALR*
	601 & 159	70.00	PALM

Service	FCC Form No.	Fee amount ($)	Payment type code
	601 & 159		PALS*
	601 & 159	70.00	PALM
	601 & 159		PALT*
	601 & 159	70.00	PALM
k. Renewal Only (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety).	601 & 159	70.00	PALM
l. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety) (Electronic Filing).	601 & 159	70.00	PALM
m. Assignment of Authorization (PMRS & CMRS)	603 & 159	70.00	PALM
n. Assignment of Authorization (PMRS & CMRS) (Electronic Filing).	603 & 159	70.00	PALM
o. Transfer of Control (PMRS & CMRS); Spectrum Leasing	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
p. Transfer of Control (PMRS & CMRS); Spectrum Leasing (Electronic Filing).	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
q. Duplicate License	601 & 159	70.00	PADM
r. Duplicate License (Electronic Filing)	601 & 159	70.00	PADM
s. Special Temporary Authority	601 & 159	70.00	PALM
t. Special Temporary Authority (Electronic Filing)	601 & 159	70.00	PALM
u. Rule Waiver	601, 603 or	200.00	PDWM
	608 & 159	200.00	PDWM
v. Rule Waiver (Electronic Filing)	601, 603 or	200.00	PDWM
	608, 609T 159	200.00	PDWM
w. Consolidate Call Signs	601 & 159	70.00	PALM
x. Consolidate Call Signs (Electronic Filing)	601 & 159	70.00	PALM
y. Modification for Spectrum Leasing	608 & 159	70.00	PALM
z. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	70.00	PALM
aa. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	PATM
7. 218–219 MHz (previously IVDS):			
a. New; Renewal/Modification	601 & 159		PAIR*
	601 & 159	70.00	PAIM
b. New; Renewal/Modification (Electronic Filing)	601 & 159		PAIR*
	601 & 159	70.00	PAIM
c. Modification; Non-Profit	601 & 159	70.00	PAIM
d. Modification; Non-Profit (Electronic Filing)	601 & 159	70.00	PAIM
e. Renewal Only	601 & 159		PAIR*
	601 & 159	70.00.	PAIM
f. Renewal (Electronic Filing)	601 & 159		PAIR*
	601 & 159	70.00	PAIM
g. Assignment of Authorization	603 & 159	70.00	PAIM
h. Assignment of Authorization (Electronic Filing)	603 & 159	70.00	PAIM
i. Transfer of Control; Spectrum Leasing	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
j. Transfer of Control; Spectrum Leasing (Electronic Filing)	603 & 159	70.00	PATM
	608 & 159	70.00	PATM
k. Duplicate License	601 & 159	70.00	PADM
l. Duplicate License (Electronic Filing)	601 & 159	70.00	PADM
m. Special Temporary Authority	601 & 159	70.00	PAIM
n. Special Temporary Authority (Electronic Filing)	601 & 159	70.00	PAIM
o. Modification for Spectrum Leasing	608 & 159	70.00	PAIM
p. Modification for Spectrum Leasing (Electronic Filing)	608 & 159	70.00	PAIM
q. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	PATM
8. General Mobile Radio (GMRS):			
a. New; Renewal/Modification	605 & 159		PAZR*
	605 & 159	70.00	PAZM
b. New; Renewal/Modification (Electronic Filing)	605 & 159		PAZR*
	605 & 159	70.00	PAZM
c. Modification	605 & 159	70.00	PAZM
d. Modification (Electronic Filing)	605 & 159	70.00	PAZM
e. Renewal Only	605 & 159		PAZR*
	605 & 159	70.00	PAZM
f. Renewal (Electronic Filing)	605 & 159		PAZR*
	605 & 159	70.00	PAZM
g. Duplicate License	605 & 159	70.00	PADM
h. Duplicate License (Electronic Filing)	605 & 159	70.00	PADM
i. Special Temporary Authority	605 & 159	70.00	PAZM
j. Special Temporary Authority (Electronic Filing)	605 & 159	70.00	PAZM
k. Rule Waiver	605 & 159	200.00	PDWM
l. Rule Waiver (Electronic Filing)	605 & 159	200.00	PDWM
9. Restricted Radiotelephone:			
a. New (Lifetime Permit)	605 & 159	70.00	PARR
New (Limited Use)	605 & 159	70.00	PARR
b. Duplicate/Replacement Permit	605 & 159	70.00	PADM

Service	FCC Form No.	Fee amount ($)	Payment type code
Duplicate/Replacement Permit (Limited Use)	605& 159	70.00	PADM
10. Commercial Radio Operator:			
a. Renewal Only; Renewal/M Modification	605 & 159	70.00	PACS
b. Duplicate	605 & 159	70.00	PADM
11. Hearing	Corres & 159	12,755.00	PFHM
12. Common Carrier Microwave (Pt. To Pt., Local TV Trans. & Millimeter Wave Service):			
a. New; Renewal/Modification (Electronic Filing Required)	601 & 159		CJPR*
	601 & 159	295.00	CJPM
b. Major Modification; Consolidate Call Signs (Electronic Filing Required).	601 & 159	295.00	CJPM
c. Renewal (Electronic Filing Required)	601 & 159		CJPR*
	601 & 159	295.00	CJPM
d. Assignment of Authorization; Transfer of Control; Spectrum Leasing.	603 & 159	105.00	CCPM
	608 & 159	105.00	CCPM
Additional Stations (Electronic Filing Required)	603 or 608 & 159	70.00	CAPM
e. Duplicate License (Electronic Filing Required)	601 & 159	70.00	PADM
f. Extension of Construction Authority (Electronic Filing Required).	601 & 159	105.00	CCPM
g. Special Temporary Authority	601 & 159	135.00	CEPM
h. Special Temporary Authority (Electronic Filing)	601 & 159	135.00	CEPM
i. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	295.00	CJPM
j. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	CAPM
13. Common Carrier Microwave (DEMS):			
a. New; Renewal/Modification (Electronic Filing Required)	601 & 159		CJLR*
	601 & 159	295.00	CJLM
b. Major Modification; Consolidate Call Signs (Electronic Filing Required).	601 & 159	295.00	CJLM
c. Renewal (Electronic Filing Required)	601 & 159		CJLR*
	601 & 159	295.00	CJLM
d. Assignment of Authorization; Transfer of Control; Spectrum Leasing.	603 & 159	105.00	CCLM
	608 & 159	105.00	CCLM
Additional Stations (Electronic Filing Required)	603 or		
	608 & 159	70.00	CALM
e. Duplicate License (Electronic Filing Required)	601 & 159	70.00	PADM
f. Extension of Construction Authority (Electronic Filing Required).	601 & 159	105.00	CCLM
g. Special Temporary Authority	601 & 159	135.00	CELM
h. Special Temporary Authority (Electronic Filing)	601 & 159	135.00	CELM
i. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	295.00	CJLM
j. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	CALM
14. Broadcast Auxiliary (Aural and TV Microwave):			
a. New; Modification; Renewal/Modification	601 & 159	165.00	MEA
b. New; Modification; Renewal/Modification (Electronic Filing).	601 & 159	165.00	MEA
c. Special Temporary Authority	601 & 159	190.00	MGA
d. Special Temporary Authority (Electronic Filing)	601 & 159	190.00	MGA
e. Renewal Only	601 & 159	70.00	MAA
f. Renewal (Electronic Filing)	601 & 159	70.00	MAA
15. Broadcast Auxiliary (Remote and Low Power):			
a. New; Modification; Renewal/Modification	601 & 159	165.00	MEA
b. New; Modification; Renewal/Modification (Electronic Filing).	601 & 159	165.00	MEA
c. Renewal Only	601 & 159	70.00	MAA
d. Renewal (Electronic Filing)	601 & 159	70.00	MAA
e. Special Temporary Authority	601 & 159	190.00	MGA
f. Special Temporary Authority (Electronic Filing)	601 & 159	190.00	MGA
16. Pt 22 Paging & Radiotelephone:			
a. New; Major Mod; Additional Facility; Major Amendment; Major Renewal/Mod; Fill in Transmitter (Per Transmitter) (Electronic Filing Required).	601 & 159	435.00	CMD
b. Minor Mod; Renewal; Minor Renewal/Mod; (Per Call Sign) 900 MHz Nationwide Renewal Net Organ; New Operator (Per Operator/Per City) Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	70.00	CAD
c. Auxiliary Test (Per Transmitter); Consolidate Call Signs (Per Call Sign) (Electronic Filing Required).	601 & 159	380.00	CLD
d. Special Temporary Authority (Per Location/Per Frequency).	601 & 159	380.00	CLD

Service	FCC Form No.	Fee amount ($)	Payment type code
e. Special Temporary Authority (Per Location/Per Frequency) (Electronic Filing).	601 & 159	380.00	CLD
f. Assignment of License or Transfer of Control;	603 & 159	435.00	CMD
Spectrum Leasing (Full or Partial) (Per First Call Sign);	608 & 159	435.00	CMD
Additional Call Signs (Per Call Signs) (Electronic Filing Required).	603 or 608 & 159	70.00	CAD
g. Subsidiary Comm. Service (Per Request) (Electronic Filing Required).	601 & 159	190.00	CFD
h. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	435.00	CMD
i. Minor Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	70.00	CAD
j. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	CAD
17. Cellular:			
a. New; Major Mod; Additional Facility; Major Renewal/Mod (Per Call Sign) (Electronic Filing Required).	601 & 159	435.00	CMC
b. Minor Modification; Minor Renewal/Mod (Per Call Sign) (Electronic Filing Required).	601 & 159	115.00	CDC
c. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign).	603 & 159	435.00	CMC
Spectrum Leasing (Electronic Filing Required)	608 & 159	435.00	CMC
d. Notice of Extension of Time to Complete Construction; (Per Request) Renewal (Per Call Sign) (Electronic Filing Required).	601 & 159	70.00	CAC
e. Special Temporary Authority (Per Request)	601 & 159	380.00	CLC
f. Special Temporary Authority (Per Request) (Electronic Filing).	601 & 159	380.00	CLC
g. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	435.00	CMC
h. Minor Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	115.00	CDC
18. Rural Radio:			
a. New; Major Renew/Mod; Additional Facility (Per Transmitter) (Electronic Filing Required).	601 & 159		CGRR *
	601 & 159	200.00	CGRM
b. Major Mod; Major Amendment (Per Transmitter) (Electronic Filing Required).	601 & 159	200.00	CGRM
c. Minor Modification; (Per Transmitter) (Electronic Filing Required).	601 & 159	70.00	CARM
d. Assignment of License; Transfer of Control (Full or Partial) (Per Call Sign).	603 & 159	200.00	CGRM
Spectrum Leasing	608 & 159	200.00	CGRM
Additional Calls (Per Call Sign) (Electronic Filing Required)	603 or 608 & 159	70.00	CARM
e. Renewal (Per Call Sign); Minor Renewal/Mod (Per Transmitter) (Electronic Filing Required).	601 & 159		CARR *
	601 & 159	70.00	CARM
f. Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	70.00	CARM
g. Special Temporary Authority (Per Transmitter)	601 & 159	380.00	CLRM
h. Special Temporary Authority (Per Transmitter) (Electronic Filing).	601 & 159	380.00	CLRM
i. Combining Call Signs (Per Call Sign) (Electronic Filing Required).	601 & 159	380.00	CLRM
j. Auxiliary Test Station (Per Transmitter) (Electronic Filing Required).	601 & 159	380.00	CLRM
k. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	200.00	CGRM
l. Minor Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	70.00	CARM
19. Offshore Radio:			
a. New; Major Mod; Additional Facility; Major Amendment; Major Renew/Mod; Fill in Transmitters (Per Transmitter) (Electronic Filing Required).	601 & 159	200.00	CGF
b. Consolidate Call Signs (Per Call Sign); Auxiliary Test (Per Transmitter) (Electronic Filing Required).	601 & 159	380.00	CLF
c. Minor Modification; Minor Renewal/Modification (Per Transmitter); Notice of Completion of Construction or Extension of Time to Construct (Per Application); Renewal (Per Call Sign) (Electronic Filing Required).	601 & 159	70.00	CAF
d. Assignment of License; Transfer of Control (Full or Partial).	603 & 159	200.00	CGF
Spectrum Leasing	608 & 159	200.00	CGF
Additional Calls (Electronic Filing Required)	603 or 608 & 159	70.00	CAF
e. Special Temporary Authority (Per Transmitter)	601 & 159	380.00	CLF

Service	FCC Form No.	Fee amount ($)	Payment type code
f. Special Temporary Authority (Per Transmitter) (Electronic Filing).	601 & 159	380.00	CLF
g. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	200.00	CGF
h. Minor Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	70.00	CAF
20. Broadband Radio Service (Previously Multipoint Distribution Service):			
a. New station/Renewal/Modification (Electronic Filing Required).	601 & 159	295.00 (Per call sign)	CJM
b. Major Modification of Licenses (Electronic Filing Required).	601 & 159	295.00	CJM
c. Certification of Completion of Construction (Electronic Filing Required).	601 & 159	860.00 (Per call sign)	CPM
d. License Renewal (Electronic Filing Required)	601 & 159	295.00	CJM
e. Assignment of Authorization; Transfer of Control (first station) (Electronic Filing Required)	603 & 159	105.00	CCM
Spectrum Leasing (first station)	608 & 159	105.00	CCM
Additional Station	608 & 159	70.00	CAM
f. Extension of Construction Authorization (Electronic Filing Required).	601 & 159	250.00 (Per call sign)	CHM
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (Electronic Filing).	601 & 159	135.00 (Per call sign)	CEM
h. Special Temporary Authority	601 & 159	135.00 (Per call sign)	CEM
i. Major Modification for Spectrum Leasing (Electronic Filing Required).	608 & 159	295.00 (Per Lease Id.)	CJM
j. Designated Entity Licensee Reportable Eligibility Event	609–T & 159	70.00	CAM
21. Communications Assistance for Law Enforcement (CALEA) Petitions:	Correspondence & 159	6,695.00	CALA

■ 3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval, experimental radio services (or service).

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, OET Services, P.O. Box 979095, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
Equipment Approval Service(s)			
1. Certification:			
a. Receivers (except TV and FM) (Electronic Filing Only)	731 & 159	540.00	EEC
b. Devices Under Parts 11, 15 & 18 (except receivers) (Electronic Filing Only).	731 & 159	1,390.00	EGC
c. All Other Devices (Electronic Filing Only)	731 & 159	700.00	EFT
d. Modifications and Class II Permissive Changes (Electronic Filing Only).	731 & 159	70.00	EAC
e. Request for Confidentiality under Certification (Electronic Filing Only).	731 & 159	200.00	EBC
f. Class III Permissive Changes (Electronic Filing Only)	731 & 159	700.00	ECC
2. Advance Approval of Subscription TV Systems	Corres & 159	4,255.00	EIS
a. Request for Confidentiality For Advance Approval of Subscription TV Systems.	Corres & 159	200.00	EBS
3. Assignment of Grantee Code:			
a. For all Application Types, except Subscription TV (Electronic Filing Only—Optional Electronic Payment).	Electronic Assignment & Form 159 or Optional Electronic Payment.	70.00	EAG
4. Experimental Radio Service(s):			
a. New Station Authorization	442 & 159	70.00	EAE
b. Modification of Authorization	442 & 159	70.00	EAE
c. Renewal of Station Authorization	405 & 159	70.00	EAE
d. Assignment of License or Transfer of Control	702 & 159 or 703 & 159	70.00 70.00	EAE EAE
e. Special Temporary Authority	Corres & 159	70.00	EAE
f. Additional fee required for any of the above applications that request withholding from public inspection.	Corres & 159	70.00	EAE

■ 4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Media Bureau Services, P.O. Box 979089, St. Louis, MO 63197–9000. The asterisk (*) indicates that multiple stations and multiple fee submissions are acceptable within the same post office box.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Commercial TV Services:			
a. New and Major Change Construction Permits (per application) (Electronic Filing).	301 & 159	4,785.00	MVT
b. Minor Change (per application) (Electronic Filing)	301 & 159	1,070.00	MPT
c. Main Studio Request	Corres & 159	1,070.00	MPT
d. New License (per application) (Electronic Filing)	302–TV & 159	325.00	MJT
	302–DTV & 159	325.00	MJT
e. License Renewal (per application) (Electronic Filing)	303–S & 159	190.00	MGT
f. License Assignment.			
(i) Long Form (Electronic Filing)	314 & 159	1,070.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDT*
g. Transfer of Control.			
(i) Long Form (Electronic Filing)	315 & 159	1,070.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDT*
h. Call Sign (Electronic Filing)	380 & 159	105.00	MBT
i. Special Temporary Authority	Corres & 159	190.00	MGT
j. Petition for Rulemaking for New Community of License (Electronic Filing).	301 & 159	2,955.00	MRT
	302–TV & 159	2,955.00	MRT
k. Ownership Report (Electronic Filing)	323 & 159	70.00	MAT*
	Corres &159	70.00	MAT*
2. Commercial AM Radio Stations:			
a. New or Major Change Construction Permit (Electronic Filing).	301 & 159	4,255.00	MUR
b. Minor Change (per application) (Electronic Filing)	301 & 159	1,070.00	MPR
c. Main Studio Request (per request)	Corres & 159	1,070.00	MPR
d. New License (per application) (Electronic Filing)	302–AM & 159	700.00	MMR
e. AM Directional Antenna (per application) (Electronic Filing).	302–AM & 159	805.00	MOR
f. AM Remote Control (per application) (Electronic Filing)	301 & 159	70.00	MAR
g. License Renewal (per application) (Electronic Filing)	303–S & 159	190.00	MGR
h. License Assignment.			
(i) Long Form (Electronic Filing)	314 & 159	1,070.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDR*
i. Transfer of Control.			
(i) Long Form (Electronic Filing)	315 & 159	1,070.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDR*
j. Call Sign (Electronic Filing)	380 & 159	105.00	MBR
k. Special Temporary Authority	Corres & 159	190.00	MGR
l. Ownership Report (Electronic Filing)	323 & 159 or	70.00	MAR
	Corres & 159	70.00	MAR
3. Commercial FM Radio Stations:			
a. New or Major Change Construction Permit (Electronic Filing).	301 & 159	3,830.00	MTR
b. Minor Change (Electronic Filing)	301 & 159	1,070.00	MPR
c. Main Studio Request (per request)	Corres & 159	1,070.00	MPR
d. New License (Electronic Filing)	302–FM & 159	220.00	MHR
e. FM Directional Antenna (Electronic Filing)	302–FM & 159	670.00	MLR
f. License Renewal (per application) (Electronic Filing)	303–S & 159	190.00	MGR
g. License Assignment.			
(i) Long Form (Electronic Filing)	314 & 159	1,070.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDR*
h. Transfer of Control.			
(i) Long Form (Electronic Filing)	315 & 159	1,070.00	MPR*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDR*
i. Call Sign (Electronic Filing)	380 & 159	105.00	MBR
j. Special Temporary Authority	Corres & 159	190.00	MGR
k. Petition for Rulemaking for New Community of License or Higher Class Channel (Electronic Filing).	301 & 159 or	2,955.00	MRR
	302–FM & 159	2,955.00	MRR
l. Ownership Report (Electronic Filing)	323 & 159 or	70.00	MAR
	Corres & 159	70.00	MAR
4. FM Translators:			
a. New or Major Change Construction Permit (Electronic Filing).	349 & 159	805.00	MOF
b. New License (Electronic Filing)	350 & 159	165.00	MEF

Service	FCC Form No.	Fee amount ($)	Payment type code
c. License Renewal (Electronic Filing)	303–S & 159	70.00	MAF
d. Special Temporary Authority	Corres & 159	190.00	MGF
e. License Assignment (Electronic Filing)	345 & 159	155.00	MDF*
	314 & 159	155.00	MDF*
	316 & 159	155.00	MDF*
f. Transfer of Control (Electronic Filing)	345 & 159	155.00	MDF*
	315 & 159	155.00	MDF*
	316 & 159	155.00	MDF*
5. TV Translators and LPTV Stations:			
a. New or Major Change Construction Permit (per application) (Electronic Filing).	346 & 159	805.00	MOL
b. New License (per application) (Electronic Filing)	347 & 159	165.00	MEL
c. License Renewal (Electronic Filing)	303–S & 159	70.00	MAL*
d. Special Temporary Authority	Corres & 159	190.00	MGL
e. License Assignment (Electronic Filing)	345 & 159	155.00	MDL*
	314 & 159	155.00	MDL*
	316 & 159	155.00	MDL*
f. Transfer of Control (Electronic Filing)	345 & 159	155.00	MDL*
	315 & 159	155.00	MDL*
	316 & 159	155.00	MDL*
g. Call Sign (Electronic Filing)	380 & 159	105.00	MBT
6. FM Booster Stations:			
a. New or Major Change Construction Permit (Electronic Filing).	349 & 159	805.00	MOF
b. New License (Electronic Filing)	350 & 159	165.00	MEF
c. Special Temporary Authority	Corres & 159	190.00	MGF
7. TV Booster Stations:			
a. New or Major Change (Electronic Filing)	346 & 159	805.00	MOF
b. New License (Electronic Filing)	347 & 159	165.00	MEF
c. Special Temporary Authority	Corres & 159	190.00	MGF
8. Class A TV Services:			
a. New and Major Change Construction Permits (per application) (Electronic Filing).	301–CA & 159	4,785.00	MVT
b. New License (per application) (Electronic Filing)	302–CA & 159	325.00	MJT
c. License Renewal (per application) (Electronic Filing)	303–S & 159	190.00	MGT
d. Special Temporary Authority	Corres & 159	190.00	MGT
e. License Assignment.			
(i) Long Form (Electronic Filing)	314 & 159	1,070.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDT*
f. Transfer of Control.			
(i) Long Form (Electronic Filing)	315 & 159	1,070.00	MPT*
(ii) Short Form (Electronic Filing)	316 & 159	155.00	MDT*
g. Main Studio Request	Corres & 159	1,070.00	MPT
h. Call Sign (Electronic Filing)	380 & 159	105.00	MBT
9. Cable Television Services:			
a. CARS License	327 & 159	295.00	TIC
b. CARS Modifications	327 & 159	295.00	TIC
c. CARS License Renewal (Electronic Filing)	327 & 159	295.00	TIC
d. CARS License Assignment	327 & 159	295.00	TIC
e. CARS Transfer of Control	327 & 159	295.00	TIC
f. Special Temporary Authority	Corres & 159	190.00	TGC
g. Cable Special Relief Petition	Corres & 159	1,495.00	TQC
h. Cable Community Registration (Electronic Filing)	322 & 159	70.00	TAC
i. Aeronautical Frequency Usage Notifications (Electronic Filing).	321 & 159	70.00	TAC

■ 5. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings for the wireline competition services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Wireline Competition Bureau Applications, P.O. Box 979091, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Domestic 214 Applications	Corres & 159	1,155.00	CDT
2. Tariff Filings:			
a. Filing Fees (per transmittal or cover letter)	Corres & 159	925.00	CQK

Service	FCC Form No.	Fee amount ($)	Payment type code
b. Application for Special Permission Filing (request for waiver of any rule in Part 61 of the Commission's Rules) (per request).	Corres & 159	925.00	CQK
c. Waiver of Part 69 Tariff Rules (per request)	Corres & 159	925.00	CQK
3. Accounting:			
a. Review of Depreciation Update Study (single state)	Corres & 159	40,015.00	BKA
(i) Each Additional State	Corres & 159	1,285.00	CVA
b. Petition for Waiver (per petition).			
(i) Waiver of Part 69 Accounting Rules & Part 32 Accounting Rules, Part 43 Reporting Requirements Part 64 Allocation of Costs Rules Part 65 Rate of Return & Rate Base Rules.	Corres & 159	8,790.00	BEA
(ii) Part 36 Separation Rules	Corres & 159	8,790.00	BEB

■ 6. Section 1.1106 is revised to read as follows:

§ 1.1106 Schedule of charges for applications and other filings for the enforcement services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Enforcement Bureau, P.O. Box 979094, St. Louis, MO 63197–9000 with the exception of Accounting and Audits, which will be invoiced. Carriers should follow invoice instructions when making payment.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Formal Complaints	Corres & 159	230.00	CIZ
2. Accounting and Audits:			
a. Field Audit	Carriers will be invoiced for the amount due.	117,490.00	BMA
b. Review of Attest Audit	Carriers will be invoiced for the amount due.	64,130.00	BLA
3. Development and Review of Agreed upon—Procedures Engagement.	Corres & 159	64,130.00	BLA
4. Pole Attachment Complaint	Corres & 159	285.00	TPC

■ 7. Section 1.1107 is revised to read as follows:

§ 1.1107 Schedule of charges for applications and other filings for the international services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, International Bureau Applications, P.O. Box 979093, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. International Fixed Public Radio (Public & Control Stations):			
a. Initial Construction Permit (per station)	407 & 159	965.00	CSN
b. Assignment or Transfer (per Application)	702 & 159 or	965.00	CSN
	704 & 159	965.00	CSN
c. Renewal (per license)	405 & 159	700.00	CON
d. Modification (per station)	403 & 159	700.00	CON
e. Extension of Construction Authorization (per station)	701 & 159	350.00	CKN
f. Special Temporary Authority or request for Waiver (per request).	Corres & 159	350.00	CKN
2. Section 214 Applications:			
a. Overseas Cable Construction	Corres & 159	17,215.00	BIT
b. Cable Landing License.			
(i) Common Carrier	Corres & 159	1,935.00	CXT
(ii) Non-Common Carrier	Corres & 159	19,145.00	BJT
c. All other International 214 Applications	Corres & 159	1,155.00	CUT
d. Special Temporary Authority (all services)	Corres & 159	1,155.00	CUT
e. Assignments or transfers (all services)	Corres & 159	1,155.00	CUT
3. Fixed Satellite Transmit/Receive Earth Stations:			
a. Initial Application (per station)	312 Main & Schedule B & 159.	2,880.00	BAX
b. Modification of License (per station)	312 Main & Schedule B & 159.	200.00	CGX

Service	FCC Form No.	Fee amount ($)	Payment type code
c. Assignment or Transfer.			
(i) First station	312 Main & Schedule A & 159.	570.00	CNX
(ii) Each Additional Station	Attachment to 312–Schedule A.	190.00	CFX
d. Renewal of License (per station)	312–R & 159	200.00	CGX
e. Special Temporary Authority (per request)	312 Main & 159	200.00	CGX
f. Amendment of Pending Application (per station)	312 Main & Schedule B & 159.	200.00	CGX
g. Extension of Construction Permit (modification) (per station).	312 Main & 159	200.00	CGX
4. Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band):			
a. Lead Application	312 Main & Schedule B & 159.	6,380.00	BDS
b. Routine Application (per station)	312 Main & Schedule B & 159.	70.00	CAS
c. Modification of License (per station)	312 Main & Schedule B & 159.	200.00	CGS
d. Assignment or Transfer.			
(i) First Station	312 Main & Schedule A & 159.	570.00	CNS
(ii) Each Additional Station	Attachment to 312–Schedule A.	70.00	CAS
e. Renewal of License (per station)	312–R & 159	200.00	CGS
f. Special Temporary Authority (per request)	312 Main & 159	200.00	CGS
g. Amendment of Pending Application (per station)	312 Main & Schedule A or B & 159.	200.00	CGS
h. Extension of Construction Permit (modification) (per station).	312 & 159	200.00	CGS
5. Receive Only Earth Stations:			
a. Initial Applications for Registration or License (per station).	312 Main & Schedule B & 159.	435.00	CMO
b. Modification of License or Registration (per station)	312 Main & Schedule B & 159.	200.00	CGO
c. Assignment or Transfer.			
(i) First Station	312 Main & Schedule A & 159.	570.00	CNO
(ii) Each Additional Station	Attachment to 312–Schedule A.	190.00	CFO
d. Renewal of License (per station)	312–R & 159	200.00	CGO
e. Amendment of Pending Application (per station)	312 Main & Schedule A or B & 159.	200.00	CGO
f. Extension of Construction Permit (modification) (per station).	312 Main & 159	200.00	CGO
g. Waivers (per request)	Corres & 159	200.00	CGO
6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:			
a. Initial Application (per station)	312 Main & Schedule B & 159.	10,620.00	BGV
b. Modification of License (per system)	312 Main & Schedule B & 159.	200.00	CGV
c. Assignment or Transfer of System	312 Main & Schedule A & 159.	2,840.00	CZV
d. Renewal of License (per system)	312–R & 159	200.00	CGV
e. Special Temporary Authority (per request)	312 & 159	200.00	CGV
f. Amendment of Pending Application (per system)	312 Main & Schedule A or B & 159.	200.00	CGV
g. Extension of Construction Permit (modification) (per system).	312 & 159	200.00	CGV
7. Mobile Satellite Earth Stations:			
a. Initial Applications of Blanket Authorization	312 Main & Schedule B & 159.	10,620.00	BGB
b. Initial Application for Individual Earth Station	312 Main & Schedule B & 159.	2,550.00	CYB
c. Modification of License (per system)	312 Main & Schedule B & 159.	200.00	CGB
d. Assignment or Transfer (per system)	312 Main & Schedule A & 159.	2,840.00	CZB
e. Renewal of License (per system)	312–R & 159	200.00	CGB
f. Special Temporary Authority (per request)	312 & 159	200.00	CGB
g. Amendment of Pending Application (per system)	312 Main & Schedule B & 159.	200.00	CGB

Service	FCC Form No.	Fee amount ($)	Payment type code
h. Extension of Construction Permit (modification) (per system).	312 & 159	200.00	CGB
8. Space Stations (Geostationary):			
a. Application for Authority to Launch & Operate (per satellite).			
(i) Initial Application	312 Main & Schedule S & 159.	132,030.00	BNY
(ii) Replacement Satellite	312 Main & Schedule S & 159.	132,030.00	BNY
b. Assignment or Transfer (per satellite)	312 Main & Schedule A & 159.	9,435.00	BFY
c. Modification (per satellite)	312 Main & Schedule S (if needed) & 159.	9,435.00	BFY
d. Special Temporary Authority (per satellite)	312 & 159	945.00	CRY
e. Amendment of Pending Application (per satellite)	312 Main & Schedule S (if needed) & 159.	1,890.00	CWY
f. Extension of Launch Authority (per satellite)	312 Main & Corres & 159	945.00	CRY
9. Space Stations (NGSO):			
a. Application for Authority to Launch & Operate (per system of technically identical satellites) satellites).	312 Main & Schedule S & 159.	454,705.00	CLW
b. Assignment or Transfer (per system)	312 Main & Schedule A & 159.	13,000.00	CZW
c. Modification (per system)	312 Main & Schedule S (if needed) & 159.	32,480.00	CGW
d. Special Temporary Authority (per request)	Corres & 159	3,255.00	CXW
e. Amendment of Pending Application (per request)	312 Main & Schedule S & 159.	6,500.00	CAW
f. Extension of Launch Authority (per system)	312 Main & 159	3,255.00	CXW
10. Direct Broadcast Satellites:			
a. Authorization to Construct or Major Modification (per satellite).	312 Main & Schedule S & 159.	3,830.00	MTD
b. Construction Permit and Launch Authority (per satellite)	312 Main & Schedule S & 159.	37,180.00	MXD
c. License to Operate (per satellite)	312 Main & Schedule S & 159.	1,070.00	MPD
d. Special Temporary Authority (per satellite)	312 Main & 159	190.00	MGD
11. International Broadcast Stations:			
a. New Station & Facilities Change Construction Permit (per application).	309 & 159	3,220.00	MSN
b. New License (per application)	310 & 159	730.00	MNN
c. License Renewal (per application)	311 & 159	180.00	MFN
d. License Assignment or Transfer of Control (per station license).	314 & 159 or 315 & 159 or 316 & 159	115.00 115.00 115.00	MCN MCN MCN
e. Frequency Assignment & Coordination (per frequency hour).	Corres & 159	70.00	MAN
f. Special Temporary Authorization (per application)	Corres & 159	190.00	MGN
12. Permit to Deliver Programs to Foreign Broadcast Stations (per application):			
a. Commercial Television Stations	308 & 159	105.00	MBT
b. Commercial AM or FM Radio Stations	308 & 159	105.00	MBR
13. Recognized Operating Agency (per application):	Corres & 159	1,155.00	CUG

■ 8. Section 1.1108 is revised to read as follows:

§ 1.1108 Schedule of charges for applications and other filings for the international telecommunication services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, International Telecommunication Fees, P.O. Box 979096, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. Administrative Fee For Collections (per line item)	99 & 99A	2.00	IAT
2. Telecommunication Charges	99 & 99A		ITTS

■ 9. Section 1.1109 is revised to read as follows:

§ 1.1109 Schedule of charges for applications and other filings for the Homeland services.

Payment can be made electronically using the Commission's electronic filing and payment system "Fee Filer" (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, Homeland Bureau Applications, P.O. Box 979092, St. Louis, MO 63197–9000.

Service	FCC Form No.	Fee amount ($)	Payment type code
1. **Communication Assistance for Law Enforcement (CALEA)** Petitions.	Corres & 159	6,695.00	CLEA

[FR Doc. 2016–17621 Filed 7–26–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 81, No. 144
Wednesday, July 27, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[Docket No. FHWA–2016–0002]

RIN 2125–AF70

Tribal Transportation Self-Governance Program; Negotiated Rulemaking Proposed Committee Membership and First Meeting

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of rulemaking committee meeting.

SUMMARY: As required by the Negotiated Rulemaking Act, the Secretary of Transportation has selected the proposed members of a committee to develop proposed rules for the Tribal Transportation Self-Governance Program (TTSGP). Tribes in each of the 12 Bureau of Indian Affairs (BIA) Regions, as well as national and regional tribal organizations were invited to nominate a primary and alternate representative to serve on the committee. After considering the nominations received, the Secretary proposes to appoint the persons named in this document as committee members. Tribes, tribal organizations, and individual tribal members who believe that their interests will not be adequately represented by the persons identified in this document may submit comments on the proposed selection, apply for membership on the committee, or submit other nominations. Additionally, the Agency announces that the first meeting of the TTSGP committee will be held August 16–18, 2016. The meeting is open to the public.

DATES: Comments on the proposed committee membership to this negotiated rulemaking committee must be received no later than August 26, 2016.

The meeting will be held on August 16–18, 2016, from 8 a.m. to 5 p.m., ET.

ADDRESSES: The meeting will be held at the Eastern Federal Lands Highway Division, Loudoun Tech Center, 21400 Ridgetop Circle, Sterling, VA 20166–6511. Attendance is open to the public up to the room's capacity. Copies of the TTSPG Committee materials and an agenda will be made available in advance of the meeting at *https://flh.fhwa.dot.gov/programs/ttp/*.

Send nominations and comments to Mr. Robert Sparrow, Designated Federal Official, Federal Highway Administration, Room E61–314, 1200 New Jersey Ave. SE., Washington, DC 20590. Or email to: *FHWA-TTSGP@dot.gov*.

Nominations and comments received by FHWA will be available for inspection at the address listed above from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert W. Sparrow, Designated Federal Official, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–9483 or at *robert.sparrow@dot.gov*. Vivian Philbin, Assistant Chief Counsel, 12300 West Dakota Avenue, Lakewood, CO 80228. Telephone: (720) 963–3445 or at *vivian.philbin@dot.gov*. Additional information may be posted on the FHWA Tribal Transportation Program Web site at *https://flh.fhwa.dot.gov/programs/ttp/* as it comes available.

SUPPLEMENTARY INFORMATION:

I. Background

As required by Section 1121 of the Fixing America's Surface Transportation (FAST) Act, the Secretary shall, pursuant to a negotiated rulemaking process, develop a Notice of Proposed Rulemaking (NPRM) that contains the regulations required to carry the TTSGP. Section 1121 also requires that in establishing this committee, the Secretary will (1) apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States and (2) select the tribal representatives for the committee from among elected officials of tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. To the maximum extent possible, FHWA considered geographical location, size, and existing transportation and self-governance experience, in selecting tribal committee representatives.

The Secretary invites organizations and individuals to comment on the nominations in this document or nominate other persons for membership on the committee. The Secretary intends that the proposed committee (including any additional members selected) reflect balanced interests as follows:

(1) Members of geographically diverse small, medium, and large Indian tribes;

(2) Members of tribes identified as Self-Governance Tribes in transportation or other programs as well as from tribes whose tribes have existing Title 23 U.S.C. funding agreements with the Department; and

(3) Members of tribes with various levels and types of experience in the diverse concerns of transportation, management, and leadership.

On April 25, 2016 (81 FR 24158), FHWA announced its intent to establish a negotiated rulemaking committee to negotiate and develop proposed regulations to implement Section 1121 of the FAST Act and to solicit applications for nominations for membership on the TTSGP committee. A total of 33 nominations were received for tribal membership to the committee. This included multiple nominations from tribes located within 10 of the 12 BIA Regions. Only one nomination was received from tribes located within the BIA Midwest Region as well as the BIA Rocky Mountain Region. In addition, nominations and letters of support were received from national and regional tribal organizations.

The Secretary has selected 12 primary regional tribal representatives, 2 tribal representatives that received backing and support from national or regional tribal organization/committees, and 4 additional tribal representatives based on their experience and knowledge as well as to improve the overall diversity of the committee. In addition, the Secretary has selected 7 Federal representatives for the committee, bringing the total proposed committee membership to 25, which meets the requirements of Negotiated Rulemaking Act (5 U.S.C. 565). Five additional alternate representatives were also selected. Generally, tribal members selected to the committee as either representing a tribal organization or a Secretarial selection will also perform as a regional alternate if required. After careful review of all of the individuals nominated to be TTSGP committee members, the Secretary of Transportation hereby proposes the following committee membership:

Federal Representatives

- Robert Sparrow, Designated Federal Official, FHWA, Washington, DC.
- Vivian Philbin, Assistant Chief Counsel, FHWA, Lakewood, CO.
- Basharat Siddiqi, Division Administrator, FHWA, Oklahoma City, OK.
- Kenneth Martin, Deputy Assistant Secretary for Tribal Government Affairs, Office of the Secretary, USDOT, Washington, DC.
- Elan Flippin, Tribal Transit Program Manager, FTA, Washington, DC.
- (TBD), USDOT, Washington, DC.
- LeRoy Gishi, Chief, BIA Division of Transportation, Washington, DC.

Primary Tribal Representatives

- ALASKA REGION—Denise Michaels, Director of Transportation, Kawerak, Inc., Nome, AK.
- EASTERN REGION—Wesley Woodruff, Facilities Division Director, Poarch Band of Creek Indians, Atmore, AL.
- EASTERN OKLAHOMA REGION—Palmer S. Mosely V, Executive Officer of Self-Determination, The Chickasaw Nation, Ada, OK.
- GREAT PLAINS REGION—Ron His Horse is Thunder, Transportation Director, Standing Rock Sioux Tribe, Ft. Yates, SD.
- MIDWEST REGION—David Conner, Self-Governance Coordinator, Red Lake Band of Chippewa Indians, Red Lake, MN.
- NAVAJO REGION—Darryl Bradley, Principal Civil Engineer, Navajo Nation, Window Rock, AZ.
- NORTHWEST REGION—Timothy Ballew II, Tribal Chairman, Lummi Nation, Bellingham, WA.
- PACIFIC REGION—Michael Hostler, Transportation Director, Hoopa Valley Tribe, Hoopa, CA.
- ROCKY MOUNTAIN REGION—John Smith, Transportation Director, Eastern Shoshone and Northern Arapaho Tribes' Joint Business Council on the Wind River Indian Reservation, Arapahoe, WY.
- SOUTHERN PLAINS REGION—Beverly Edwina Butler Wolfe, Governor, Absentee Shawnee Tribe of Oklahoma, Shawnee, OK.
- SOUTHWEST REGION—Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo, Ohkay Owingeh, NM.
- WESTERN REGION—Jennifer Lynn Jack, Roads Manager, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ.

Other Tribal Representatives

- Mickey Peercy, Executive Director of Self-Governance, Choctaw Nation of Oklahoma, Tishomingo, OK, proposed by the DOI Self-Governance Workgroup.
- Jody Clark, Director—Seneca Nation DOT, Seneca Nation, Salamanca, NY, proposed by United Southern and Eastern Tribes (USET). Will also act as the Alternate representative for the Eastern Region, if required.
- Gerald Hope, Transportation Director, Sitka Tribe of Alaska, Sitka, AK. Will also act as the Alternate representative for the Alaska Region, if required.
- Karen Woodard, Administrator—Realty, Planning, Construction Services and Facilities, Morongo Band of Mission Indians, Banning, CA. Will also act as the Alternate representative for the Pacific Region, if required.
- Elizabeth Kay Wallace Rhoads, Principal Chief—Sac and Fox Nation, Meeker, OK. Will also act as the Alternate representative for the Southern Plains Region, if required.
- Royce Gchachu, Transportation Director, Zuni Pueblo, Zuni, NM. Will also act as the Alternate representative for the Southwest Region, if required.

Alternate Tribal Representatives

- EASTERN OKLAHOMA REGION—Lindsay Earls, Legislative Counsel for Government Relations, The Cherokee Nation, Tahlequah, OK.
- GREAT PLAINS REGION—David Kelly, Transportation Director, Oglala Sioux Tribe, Pine Ridge, SD.
- NAVAJO REGION—Jonah Begay, GIS Supervisor, Navajo Nation, Window Rock, AZ.
- NORTHWEST REGION—Mary Beth Frank-Clark, Transportation Planner, Nez Pierce Tribe, Lewiston, ID.
- WESTERN REGION—Octavio Machado, Transit Manager, Ak-Chin Indian Community, Maricopa, AZ.

If you believe that your interests will not be adequately represented by any person identified as being a member of the committee, you may apply or nominate another person for membership on the committee. Each application or nomination must include:

(1) The name of the nominee.

(2) The tribal interest(s) to be represented by the nominee (based on the interests listed above).

(3) Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposed to represent.

(4) The reasons that the proposed members of the committee identified in this document do not represent the interests of the person submitting the application or nomination.

(5) Your name, address, telephone number, and the name of the tribe or tribal organization with which you are affiliated. To be considered, comments and nominations must be received by the close of business on August 26, 2016, at the location indicated in the **ADDRESSES** section.

II. Meeting Participation

The meeting will be open to the public. Time has been set aside during each day of the meeting for members of the public to contribute to the discussion and provide oral comments.

The committee will dedicate a substantial amount of time at the first meeting to establishing the rules, procedures, and process of the committee, such as outlining the voting rights of the committee members and defining the meaning of "consensus."

III. Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by August 1, 2016, to Federal Docket Management System (FDMS) Docket Number FHWA–2016–0002. If you submit a comment, please include the docket number for this document (FHWA–2016–0002). You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. The FHWA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FHWA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FHWA–2016–0002, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FHWA–2016–0002, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

IV. Future Committee Meetings and Rulemaking Calendar

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of all future meetings will be shown on the FHWA TTP Web site at *https://flh.fhwa.dot.gov/programs/ttp/* at least 15 calendar days prior to each meeting. The FHWA has developed a provisional schedule of committee meetings, running through June 2017, which we plan to finalize with the committee during the first meeting. The FHWA intends to complete the negotiated rulemaking process for the proposed rule within the first half of 2017 and to publish a NPRM, followed by a Final Rule in 2018. After the conclusion of the committee meetings, the Agency will draft the NPRM, which is expected to take approximately 6–8 weeks, depending on the degree of consensus on the issues and the supporting data developed by the committee. The NPRM will then be reviewed by DOT's Office of the Secretary and the Office of Management and Budget (OMB). The Agency will then publish the NPRM for public comment. Following the close of the public comment period the Agency will evaluate and respond to public comments as it drafts a final rule, which will also undergo Departmental and OMB review. Although the time needed to address public comments to an NPRM that has been developed through a successful negotiated rulemaking process is typically shorter than for rules conducted through the ordinary informal notice and comment process, the Agency must nonetheless address substantive public comments in the final rule, in accordance with the Administrative Procedure Act. While the Agency cannot state with certainty the time required to complete the negotiated rulemaking process and notice and comment rulemaking, the target date for publication of an NPRM is September 2017.

Issued on: July 21, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–17761 Filed 7–26–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0500]

RIN 1625–AA08

Special Local Regulation; Little Annemessex River and Somers Cove, Crisfield, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for certain waters of the Little Annemessex River and Somers Cove. This action is necessary to provide for the safety of life on these navigable waters located in Somerset County at Crisfield, MD, during an open water swim competition on September 17, 2016. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 26, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0500 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On June 1, 2016, OC Tri-Running Sports of Bishopville, MD notified the Coast Guard that it will be conducting the swim portion of the Crisfield CrabMan Triathlon from 6:30 a.m. until 9 a.m. on September 17, 2016. The open water swim competition is to be held along a designated 0.93-mile (1500 meters/1.5k) linear course that starts from a stationary barge located in the Little Annemessex River in approximate position latitude 37°58′15″ N., longitude 075°52′09″ W., and finishes at the Somers Cove Marina in Somers Cove at Crisfield, MD. Prior to the swim start, participants will be transported from the Crisfield City Dock to the barge on board a ferry. Hazards from the swim competition include approximately 200 participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within the narrow entrance to Somers Cove. The COTP Maryland-National Capital Region has determined that potential hazards associated with the swim competition would be a safety concern for anyone intending to operate within certain waters of the Little Annemessex River and Somers Cove at Crisfield, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of the Little Annemessex River and Somers Cove before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 5:30 a.m. until 10 a.m. on September 17, 2016, and if necessary due to inclement weather, from 5:30 a.m. until 10 a.m. on September 18, 2016. The regulated area would cover all navigable waters of the Little Annemessex River and Somers

Cove, from shoreline to shoreline, bounded to the north by a line drawn from the eastern shoreline of Janes Island at latitude 37°58′39″ N., longitude 075°52′05″ W. and thence eastward to the Crisfield City Dock at latitude 37°58′39″ N., longitude 075°51′50″ W., and bounded to the south by a line drawn from Long Point on Janes Island at latitude 37°58′12″ N., longitude 075°52′42″ W. and thence eastward to Hammock Point at latitude 37°57′58″ N., longitude 075°51′58″ W., located at Crisfield, MD. The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 6:30 a.m. until 9 a.m. swim competition. Except for Crisfield CrabMan Triathlon participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (Executive Orders) related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Little Annemessex River and Somers Cove for 4.5 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Coast Guard Patrol Commander deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 4.5 hours. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and

Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35–T05–0500 to read as follows:

§ 100.501–T05–0500 Special Local Regulation; Little Annemessex River and Somers Cove, Crisfield, MD.

(a) *Regulated area.* The following location is a regulated area: All navigable waters of the Little Annemessex River and Somers Cove, from shoreline to shoreline, bounded to the north by a line drawn from the eastern shoreline of Janes Island at latitude 37°58′39″ N., longitude 075°52′05″ W. and thence eastward to the Crisfield City Dock at latitude 37°58′39″ N., longitude 075°51′50″ W., and bounded to the south by a line drawn from Long Point on Janes Island at latitude 37°58′12″ N., longitude 075°52′42″ W. and thence eastward to Hammock Point at latitude 37°57′58″ N., longitude 075°51′58″ W., located at Crisfield, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant* means all persons and vessels participating in the swim portion of the Crisfield CrabMan Triathlon event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, mooring, or anchor, all persons and vessels within the regulated area at the time it is implemented are to depart the regulated area.

(3) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement period, to seek permission to transit the area, the Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). During the enforcement period, to seek permission to transit the area, the Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) for direction.

(4) The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 5:30 a.m. until 10 a.m. on September 17, 2016, and if necessary due to inclement weather, from 5:30 a.m. until 10 a.m. on September 18, 2016.

Dated: July 5, 2016.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2016–17774 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 62

RIN 2900–AP61

Supportive Services for Veteran Families Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This rulemaking would clarify VA's procedures for continuing to fund SSVF Program services in communities that have lost grants due to the non-renewal or termination of services of an existing award to a grantee by awarding non-renewed or deobligated funds to other existing SSVF grantees in or near the affected community. This award of non-renewed or deobligated funds would prevent potential access issues associated with grant termination. This rulemaking would also reduce the number of satisfaction surveys grantees are required to provide to participants in order to reduce the burden on grantees and participants.

DATES: Comments must be received on or before September 26, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AP61—Supportive Services for Veteran Families Program." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Kuhn, National Center for Homelessness Among Veterans, Supportive Services for Veteran Families Program Office, 4100 Chester Avenue, Suite 200, Philadelphia, PA 19104, (877) 737–0111. (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38, section 2044, United States Code (U.S.C.), requires the Secretary to provide financial assistance to eligible entities to provide and coordinate the provision of supportive services for very low-income veteran families occupying permanent housing. The Secretary's implementing regulations are in 38 CFR part 62, which established the SSVF Program. Through the SSVF Program, VA awards supportive services grants to private non-profit organizations or consumer cooperatives to provide or coordinate the provision of supportive services to very low-income veteran families who are residing in permanent housing and at risk of becoming homeless; lacking a fixed, regular, and adequate nighttime residence, at risk of remaining so but for grantee assistance, and scheduled to become residents of permanent housing within 90 days pending the location or development of housing suitable for permanent housing; or, after exiting permanent housing, are seeking other housing that is responsive to their needs and preferences. This proposed rulemaking would clarify existing VA policy regarding award of non-renewed or deobligated funds to other existing SSVF grantees in or near the affected community where the funds were originally used in order to maintain continuity in the services offered to these communities.

62.25 Selecting Grantees for Renewal or Non-Renewal of Supportive Services Grants

Current § 62.25 provides the process to select grantees applying for renewal of supportive services grants. Paragraph (a) of § 62.25 of 38 CFR states that VA will score the grantee using the scoring criteria set forth in § 62.24 as long as the grantee continues to meet the threshold requirements in § 62.21. Paragraph (b) provides that VA will rank in order from highest to lowest the grantees who receive at least the minimum amount of total points and points per category in the Notice of Funding Availability (NOFA). Lastly, paragraph (c) states that VA will use the grantee's ranking as the basis for selection for funding and fund the highest-ranked grantees for which funding is available. Although § 62.25 does not expressly address the award of any non-renewed funds, it is VA's policy under this authority to offer to award non-renewed funds to other qualifying existing grantees within the same community applying the same criteria in this section when re-awarding non-renewed funds. Otherwise, the community that was served by the grantee may suffer an interruption in services to those who are homeless or at-risk of becoming homeless. We propose to amend § 62.25 to expressly codify this current practice in the regulation. We propose to add a new paragraph (d) to state the process by which VA would, in its discretion, offer to award any non-renewed funds to other qualifying existing grantees. This process would be similar to the award of deobligated funds under the proposed revisions to § 62.80(d)(2).

62.36 General Operation Requirements

Section 62.36 establishes the operation requirements for grantees that provide supportive services. Paragraph (c) establishes the notifications a grantee must provide to participants before the grantee provides supportive services, which include that the services are paid for in whole or part by VA, the types of services available to the participant, and any restrictions or conditions on the receipt of the services. Paragraph (c) also states that a grantee must provide each participant with a satisfaction survey. This satisfaction survey helps VA evaluate the provision of supportive services by a grantee to a participant. The results of the satisfaction survey also assist VA in determining if future SSVF Program funds should be awarded to a grantee.

Under current paragraph (c)(2), a satisfaction survey must be provided to the participant within 45 to 60 days of the participant's entry into the grantee's program, and also within 30 days prior to the participant's pending exit from the program. However, requesting two satisfaction surveys has resulted in poor response rates by participants and has created an unnecessary burden on the grantees and the participants. Therefore, we propose to reduce the number of satisfaction surveys by eliminating the survey that must be provided to the participant within 45 to 60 days of the participant's entry to the program. By reducing the number of satisfaction surveys, VA expects to reduce the burden to the grantees and the participants and, in turn, improve the response rate. We propose to amend paragraph (c)(2) to state that a "grantee must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program."

62.80 Withholding, Suspension, Deobligation, Termination, and Recovery of Funds by VA

Current paragraph (a) of § 62.80 states that VA will recover from grantees any SSVF funds that are not used in accordance with the SSVF Program requirements. In addition, paragraph (b) of § 62.80 provides that if a grantee fails to comply with these requirements, VA may withhold further payment, suspend the supportive services grant, or prohibit the grantee from incurring additional obligations of supportive services grant funds, pending corrective action by the grantee or a decision to terminate the grant. Paragraph (c) of § 62.80 provides the circumstances under which VA may terminate a grant in whole or in part, including: When a grantee materially fails to comply with the terms and conditions of a grant award, the grantee consents to termination, or the grantee notifies VA of its intent to terminate the grant. Paragraph (d) of § 62.80 establishes the circumstances under which VA may deobligate amounts approved for use by a grantee. The SSVF Program has a robust monitoring and compliance program to ensure that community agencies awarded VA grant funds perform in accordance with their grant agreements. As part of these oversight responsibilities, SSVF Program funds may be deobligated for several reasons, including: The activity for which funding was approved is not provided, the approved amounts have not been expended within one year from the date the agreement was signed, or other circumstances as set forth in the agreement, for example, if the grantee goes bankrupt. Under § 62.80(d)(2), VA has discretionary authority to re-advertise in a Notice of Funding Availability (NOFA) the availability of funds that have been deobligated, or to award deobligated funds to applicants who previously submitted applications in response to the most recently published SSVF Program NOFA. Under this authority, it is VA's current policy that VA could award deobligated funds to existing SSVF grantees in or near the impacted community of those grantees so long as those grantees applied to the most recently published NOFA applicable to the geographic area at issue, or in the case of multi-year awards, the most recently published NOFA to which the grantee applied applicable to the geographic area at issue. This policy is designed to prevent potential access issues associated with grant termination. Otherwise, in the case of deobligated funds, it is possible that no SSVF Program services would be available in the affected communities for months before VA is able to publish a NOFA in the **Federal Register** to make available the funds to qualified grantees. This rulemaking would clarify this policy in the regulation.

We would amend § 62.80(d) by revising paragraph (d)(2). The proposed revision to § 62.80(d)(2) would state that VA may award deobligated or non-renewed funds to a qualified existing SSVF grantee serving the community where the deobligation or non-renewal occurred. A grantee who is currently serving the affected community would be better able to address the needs of the community because the grantee is already working within that community. VA understands that there may be more than one grantee in a community that is qualified to receive the deobligated funds. We would, therefore, first offer to award the deobligated or non-renewed funds to the grantee with the highest grant score (based on existing grantees most recent scores) that has the capacity to provide immediate services to the affected community. The requirement that the grantee be able to immediately offer services would be made in order to make certain that the grantee who is offered the funds is quickly able to address the needs of the impacted community and reduce added delays in providing services. However, such grantee may not want to take on the added funds or responsibilities. In such case, VA would offer the funds to the next qualified grantee in rank order until all funds are awarded. There may be instances where there are no other grantees serving the community where the deobligation occurred. In such circumstances, VA would offer to award the deobligated funds to qualified grantees in rank order who serve the adjacent community, subject to the grantee's agreement to use the funds to serve the community where the deobligation occurred. We would add the requirement that the funds must be used in the community where the funds were deobligated because the deobligated funds are offered as a means of providing continuous services to the affected community, not to add more funds to a community that is already funded otherwise.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 62.36, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for § 62.36 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0757.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would only impact those entities that choose to participate in the SSVF Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. To the extent this proposed rule would have any impact on small entities, it would not have an impact on a substantial number of small entities. Therefore, under 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by OMB, unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits, and 64.033, VA Supportive Services for Veteran Families Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 19, 2016, for publication.

List of Subjects in 38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—veterans, Heath care, Homeless, Housing, Indians—lands, Individuals with disabilities, Low and moderate income housing, Manpower training programs, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

Dated: July 20, 2016.

Janet J. Coleman,

Chief, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 62 as follows:

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 2. Amend § 62.25 by adding paragraph (d) to read as follows:

§ 62.25 Selecting grantees for renewal of supportive services grants.

* * * * *

(d) At its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant Notice of Fund Availability that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide immediate services to the affected community. Under this section 62.25, the relevant Notice of Fund Availability is the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community, or for multi-year grant awards, the Notice of Fund Availability for which the grantee received the multi-year award.

(2) If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

* * * * *

■ 3. Amend § 62.36 by revising paragraph (c)(2) to read as follows:

§ 62.36 General operation requirements.

* * * * *

(c) * * *

(2) The grantee must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program.

* * * * *

■ 4. Amend § 62.80 by revising paragraph (d)(2) to read as follows:

§ 62.80 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

* * * * *

(d) * * *

(2) At its discretion, VA may re-advertise in a Notice of Fund Availability the availability of funds that have been deobligated under this section or award deobligated funds to an applicant or existing grantee. If VA chooses to award deobligated funds to an applicant or existing grantee, funds will be awarded as follows:

(i) VA will first offer to award the deobligated funds to the applicant or grantee with the highest grant score under the relevant Notice of Fund Availability that applied for or was awarded funds in the same community as, or proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide immediate services to the affected community. Under this section 62.80 the relevant Notice of Fund Availability is the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community, or for multi-year grant awards, the most recently published Notice of Fund Availability which covers the geographic area that includes the affected community for which the grantee received the multi-year award.

(ii) If the first such applicant or grantee offered the deobligated funds refuses the funds, VA will offer to award funds to the next highest-ranked such applicant or grantee, per to the criteria in paragraph (d)(2)(i) of this section, and continue on in rank order until all deobligated funds are awarded.

* * * * *

[FR Doc. 2016–17624 Filed 7–26–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0403; FRL–9949–61–Region 4]

Air Plan Approval; TN: Revisions to Logs and Reports for Startups, Shutdowns and Malfunctions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on September 25, 2013. The SIP submittal includes a change to the TDEC regulation "Logs and Reports." EPA is proposing to approve this SIP revision because it is consistent with the Clean Air Act (CAA or Act) and federal regulations governing SIPs.

DATES: Comments must be received on or before August 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0403 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached by telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Action

A. What action is EPA proposing today?

On September 25, 2013, TDEC submitted a change to the Tennessee rules to EPA for approval and incorporation into the Tennessee SIP. Specifically, the submittal includes a change to remove the existing text of subparagraph (2) from Tennessee Air Pollution Control Regulation (TAPCR) Rule 1200–3–20–.04, "Logs and Reports," and replace it with the word "Reserved." Existing subparagraph (2) provides that all sources located in or having a significant impact on a nonattainment area submit a quarterly report to the Technical Secretary of Tennessee's Air Pollution Control Board that (1) identifies periods of startups, shutdowns, and/or malfunctions (SSM events) that result in an exceedance of an emission limitation, (2) estimates the excess emissions released during such SSM events, and (3) provides total source emissions where such emissions are not otherwise required to be reported under Tennessee Air Pollution Control Regulations (TAPCR) Chapters 1200–3–10–.02 or 1200–3–16. EPA is proposing to approve Tennessee's September 25, 2013, SIP revision because the proposed revision is consistent with the requirements of the CAA and federal regulations governing SIPs.

B. EPA's Analysis of the September 25, 2013, Submittal

Section 110(a)(2)(A) of the Act requires SIP provisions such as emission limitations to be enforceable, and sections 110(a)(2)(F)(i) and (F)(ii) require plans to contain certain types of provisions related to emissions monitoring and reporting, as prescribed by the Administrator. Accordingly, 40 CFR part 51, subpart K, "Source Surveillance," requires a SIP to provide for monitoring the status of compliance with the regulations in it, including "legally enforceable procedures" for recordkeeping and reporting. *See* 40 CFR 51.211. Such recordkeeping and reporting must include "[i]nformation on the nature and amount of emissions from the stationary sources" and "[o]ther information as may be necessary to enable the state to determine whether the sources are in compliance with the applicable portions of the control strategy." *Id.* Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs must contain: "(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels;" and "(h) Compliance/enforcement strategies, including how compliance will be determined in practice."

In support of its proposed SIP revision, TDEC explains in its September 25, 2013, submittal that it considers the existing quarterly reporting requirement to be outdated in light of more recently enacted federal regulations requiring less frequent reporting. TDEC specifically points to EPA's 1999 rulemaking that reduced the required reporting frequency under the General Provisions for 40 CFR parts 60, 61, and 63 from quarterly to semi-annually. *See* "Recordkeeping and Reporting Burden Reduction," 64 FR 7458 (February 12, 1999). In addition, TDEC notes that major sources are now subject to title V operating permit program reporting requirements, which TDEC contends makes TDEC's quarterly reporting requirement unnecessary for title V sources. In particular, TDEC explains that the title V program requires sources to submit a report identifying all deviations from permit requirements every six months, and to submit an annual compliance certification. TDEC explains that the current quarterly reporting requirement in Tennessee's SIP prevents Tennessee sources from availing themselves of the less burdensome reporting requirements under more recently enacted federal regulations. Furthermore, TDEC contends that eliminating the quarterly reporting requirement will have no impact on the emissions of any air pollutant.

1. Impact of the Proposed SIP Revision on Reporting Obligations for Major Sources

Even if EPA approves Tennessee's request to remove the reporting requirements at TAPCR Rule 1200–3–20–.04(2) from Tennessee's SIP, major sources will continue to be subject to the title V reporting requirements, as well as other emissions reporting requirements in Tennessee's SIP. Regarding title V reporting requirements, Tennessee has an EPA-approved title V operating permits program and TDEC is the permitting authority. *See* "Clean Air Act Final Full Approval of Operating Permit Programs; Tennessee and Memphis-Shelby County," 66 FR 56996 (November 14, 2001). As TDEC notes, title V requires sources to submit reports of any required monitoring at least every six months. *See* 40 CFR 70.6(a)(3)(iii)(A). All instances of deviations from permit requirements, including excess emissions during SSM events, must be clearly identified in such reports. *Id.* TDEC adopted this requirement into its federally approved title V operating permits program at TAPCR Rule 1200–3–9–.02(11)(e)1(iii)(III)I. In addition, emissions during SSM events that exceed applicable emission limits must be taken into account in the annual compliance certification required by the title V program. *See* 40 CFR 70.6(c)(5) and TAPCR 1200–3–9–.02(11)(e)3(v).

The title V operating permits program also requires "[p]rompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventative measures taken." *See* 40 CFR 70.6(a)(3)(iii)(B). The permitting authority is to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. *Id.* Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the title V operating permits program to determine, among other things, what constitutes a prompt notification of a deviation from permit requirements. TDEC incorporates this prompt reporting requirement into its major source operating program at TAPCR 1200–3–9–.02(11)(e)1(iii)(III)II, which defines "prompt reporting" by reference to TAPCR Rule 1200–3–20–.03 (generally requiring reporting "within 24 hours").

In addition to the title V reporting requirements, Tennessee's SIP authorizes the Tennessee Air Pollution Control Board's Technical Secretary to require enhanced reporting as needed to verify that a "major stationary source" is operating in compliance with applicable requirements. *See* TAPCR Chapter 1200–3–10–.04(2) ("The Technical Secretary is authorized to require by permit condition any periodic or enhanced monitoring, recording and reporting that he deems necessary for the verification of the source's compliance with the applicable requirements as defined in 1200–3–9–.02(11)."). Likewise, Tennessee's SIP at TAPCR Rule 1200–3–10–.02, "Monitoring of Source Emissions, Recording, Reporting of the Same are Required," at paragraph (1)(a) states: "The Technical Secretary may require the owner or operator of any air contaminant source discharging air contaminants . . . to . . . make periodic emission reports as required in paragraph (2)." Paragraph (2)(a) clarifies that "[r]ecords and reports as the Technical Secretary shall prescribe," must be collected and submitted. Finally, TAPCR Rule 1200–3–20–.08, "Special Reports Required," states that the Technical Secretary "may require any air contaminant source to submit a report within thirty (30) days after the end of each calendar quarter" containing dates and details of any SSM events and resultant emissions in excess of applicable limitations. Thus, the SIP contains provisions that allow TDEC to collect more frequent quarterly reports similar to those in TAPCR 1200–3–20–.04(2) when deemed necessary to determine a source's compliance with applicable requirements. It is also important to note that TAPCR 1200–3–20–.04(1) remains in effect, requiring sources to collect and maintain records regarding SSM events and resultant excess emissions.

With respect to TDEC's request to remove the requirement in TAPCR Rule 1200–3–20–.04(2) that sources located in or impacting nonattainment areas report total emissions (if such reports are not otherwise required), EPA notes that other federal reporting requirements would ensure that similar emissions information is reported on a regular basis. Specifically, EPA's Air Emissions Reporting Requirements (AERR), set forth at Subpart A to 40 CFR part 51, specify that the state must submit triennial reports of annual (12-month) emissions for all sources and every-year reports of annual emissions of criteria air pollutants and their precursors for all major sources as well as annual emissions reporting from certain larger sources, as outlined in Appendix A to Subpart A. While the reporting requirement that TDEC proposes to remove from its SIP applies only to sources located in or impacting nonattainment areas, the AERR applies to all major sources located in all areas, regardless of attainment status. Specifically, under the AERR, if a source is considered a major source under 40 CFR part 70 for one criteria air pollutant or precursor pollutant, then the state must report all emissions of criteria air pollutants and precursors for that source. TDEC implements the AERR by collecting reports of annual emissions from sources in June of each year, depending on whether the triennial or annual report applies, and then compiling and submitting the information to EPA's emissions inventory system. On its Web site, TDEC outlines the thresholds, timeframes, and structure of these emissions reports, citing the AERR and a statute at Tennessee Code Annotated Section 68–201–105(b)(2), which gives the Division of Air Pollution Control the authority to "[r]equire that any person furnish the department information required by it in discharge of its duties under this part, if the department has reason to believe such person is, or may be about to, causing or contributing to air pollution." *See https://tn.gov/environment/article/apc-emissions-inventory-reporting-requirements.* TDEC also informs sources at this web address that failure to submit the reports by the applicable deadline may result in enforcement pursuant to this statute. *See also* SIP Rule TAPCR 1200–3–10–.02(1)(a) (authorizing the Technical Secretary to require submittal of periodic emissions reports).

2. Impact of the Proposed SIP Revision on Reporting Obligations for Minor Sources

There are two types of minor sources of air pollution: "true minors" and "synthetic minors." "Synthetic minors" are sources that restrain their "potential to emit" to a level that is below the major source applicability threshold through the use of emissions control, restriction on hours of operation, or other means. *See* SIP Rule TAPCR 1200–3–9–.02(11)(a) (authorizing a source to opt out of major source requirements by taking an enforceable limit on its potential to emit). *See also* SIP Rule TAPCR 1200–3–9–.01(b)(5) (defining "potential to emit"). "True minors" are sources for which potential emissions are below the major source thresholds, even assuming no emission controls and unlimited hours of operation. *See* SIP Rule TAPCR 1200–3–9–.01(b)(5). If EPA finalizes approval of the proposed SIP revision, the effects will be different for these different types of minor sources.

Synthetic minor sources, in accordance with TAPCR 1200–3–9–.02(11)(a), are subject to an enforceable limit restricting potential to emit and must implement "detailed monitoring, reporting and recordkeeping requirements that prove the source is abiding by its more restrictive emission and/or production limits." EPA approved Tennessee's request to incorporate TAPCR 1200–3–9–.02(11)(a) into the Tennessee SIP on February 13, 1997. 62 FR 6724. Accordingly, Tennessee's synthetic minor emission limits are federally enforceable. *Id.* In practice[1], TDEC's synthetic minor permits require (1) prompt reporting of any non-compliance with permit conditions designed to restrict "potential to emit" below the major source level (the "synthetic minor limit"), (2) submission of an annual compliance certification supported by records documenting the facility's compliance with its synthetic minor limit, and (3) reporting of excess emissions due to malfunctions in accordance with TAPCR Chapter 1200–3–20–.03. Thus, synthetic minor sources would remain subject to reporting requirements even if EPA approves TDEC's request to remove the reporting requirements in TAPCR Rule 1200–3–20–.04 from Tennessee's SIP.

Due to their relatively small amount of emissions, true minor sources are subject to significantly fewer emissions-related reporting obligations than major or synthetic minor sources. There is no general federal requirement for true minor sources to directly report their emissions to the state or to EPA. However, the CAA and federal regulations do require source-specific emissions reporting for true minor sources under certain circumstances. Specifically, for areas designated as marginal-or-above nonattainment for the ozone NAAQS, any source emitting 25 tons per year or more of nitrogen oxides (NO_X) or volatile organic compounds (VOCs) (both precursors to ozone formation) must report total emissions annually in accordance with the emissions statement requirement of CAA section 182(a)(3)(B). EPA approved Tennessee's regulation at TAPCR 1200–3–18–.02(8) into the SIP to satisfy the emissions statement reporting requirement for the 2008 ozone NAAQS on March 5, 2015. *See* 80 FR 11887.

Emissions from true minor sources also are captured to some extent by the AERR. Specifically, under the AERR, Tennessee must compile minor source emissions data and periodically submit that data to EPA for inclusion in the EPA's National Emissions Inventory. The rule requires triennial reports of VOC emissions in "serious," "severe," and "extreme" ozone nonattainment areas for sources that emit greater than or equal to 50 tons per year, 25 tons per year and 10 tons per year, respectively. *See* Appendix A to 40 CFR 51, Subpart A. The AERR also provides for reporting of emissions of particulate matter with a diameter of 10 micrometers or less (PM_{10}) that are greater than or equal to 70 tons per year in any area designated as "serious" nonattainment for PM_{10}. *Id.* In addition, the AERR provides for reporting of lead emissions greater than or equal to 0.5 tons per year, regardless of an area's attainment status with respect to the lead NAAQS. *Id.* Other than under these specific circumstances, the AERR instructs states to treat minor sources as "nonpoint sources" in the triennial emissions inventories (*see* 40 CFR 51.20), meaning that the emissions inventories "collectively represent individual sources that have not been inventoried as specific point or mobile sources," 40 CFR 51.50. The AERR goes on to explain: "These individual sources treated collectively as nonpoint sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources." *Id.* Accordingly, these nonpoint sources are generally estimated and aggregated within source classification codes on a county-level resolution rather than individual source emissions, in accordance with 40 CFR 51.20(d).

Subsequent to the September 25, 2013, submittal, TDEC submitted a memorandum that addressed true minor sources. In that memorandum, Tennessee highlighted the Technical Secretary's authority under 1200–3–10–.02(1)(a) to collect reports from "any air contaminant source." TDEC notes that if there were a reason to think a true minor source was impacting air quality standards, the Division of Air Pollution Control could collect these reports of emissions. This memorandum is included in the Docket for today's proposed action.

3. EPA's Evaluation the Effect of the Requested SIP Revision on TDEC's Ability To Determine Whether Sources are Operating in Compliance With the SIP

In light of the combination of federal reporting requirements, reporting requirements under Tennessee's SIP, and Tennessee's authority to request additional information on source emissions when necessary, EPA proposes to find that Tennessee's September 25, 2013, SIP revision would not impair Tennessee's ability to determine the nature and amount of emissions from both major and minor sources and whether such sources are operating in compliance with Tennessee's SIP. Accordingly, EPA's proposed approval of Tennessee's September 25, 2013, SIP revision is consistent with the minimum SIP requirements pertaining to enforceability and emissions reporting, including the "Source Surveillance" requirements specified at 40 CFR 51.211.

C. Section 110(l) and Section 193 Relaxation Considerations

As discussed above, before the removal of this paragraph, sources were required to report excess emissions during SSM events, as well as total emissions, each calendar quarter. If this provision is removed from the SIP, the requisite reporting from major sources and synthetic minor sources generally will be less frequent, and emissions from true minor sources generally will be accounted for only in aggregate for periodic AERR reporting from the state (unless TDEC exercises its authority to request submittal of additional emissions information). The effect of less frequent, or less overall required reporting constitutes a potential SIP relaxation. Section 110(l) of the Act provides that "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act." Accordingly, if provisions are removed from the federally approved SIP, states must provide a noninterference demonstration pursuant to section 110(l) of the Act.

Additionally, section 193 of the Act, the general savings clause, states: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the [CAA] Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified . . . unless the modification insures equivalent or greater emission reductions of such air pollutant." Tennessee's September 25, 2013, SIP revision would revise a regulation that was approved into Tennessee's SIP in 1980 and that impacts requirements applicable to sources located in or having a significant impact on air quality in a nonattainment area. *See* 45 FR 8004 (February 6, 1980). Therefore, section 193 must be addressed to insure that no controls in a nonattainment area are removed or modified from the SIP without equivalent or greater emission reductions.

Tennessee originally provided a brief section 110(l) and section 193 analysis in the response to public comments section of the final September 25, 2013, submittal to account for the relaxation of emissions reporting requirements.

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[1] Tennessee's "synthetic minor" permits are classified as "conditional major" permits, and can be found along with compliance reports and notices of violation in the public database at the following Web site: *https://tdec.tn.gov/tdec_online/Home.aspx.* TAPCR 1200–3–9–.02(11)(a) also requires that these types of permits are made available for public comment and hearing.

Subsequently, on July 16, 2015, Tennessee provided EPA with a clarifying memorandum that expanded the State's explanation for the rule change and why the revision would not impact air quality. This memorandum is available in the Docket for today's proposed action. In the final September 25, 2013, submittal and in the July 16, 2015, memorandum, Tennessee declares that the proposed SIP revision will have no effect on any applicable requirement concerning attainment, and reasonable further progress toward attainment and maintenance of the NAAQS, thereby addressing section 110(l) of the Act. Tennessee further contends that the proposed SIP revision is consistent with section 193 of the Act because it does not address any emissions reduction or emissions control requirement and will have no effect on the emissions of any air pollutant.

EPA preliminarily concludes that removal of the quarterly reporting requirement at TAPCR Rule 1200–3–20–.04 from Tennessee's SIP will not result in an increase in emissions of any air pollutant and therefore will not impact attainment, reasonable further progress toward attainment, or maintenance of the NAAQS. While the proposed SIP revision reduces emissions reporting obligations, SIP emission limits remain unchanged. Furthermore, as discussed above, the array of reporting requirements that will remain in effect, including title V reporting requirements, SIP reporting requirements, emissions reporting required by the State pursuant to the AERR, and additional reporting as the State deems necessary, will provide Tennessee with sufficient information to ensure that sources operate in compliance with applicable emission limits. Therefore, EPA is proposing to find that Tennessee's September 25, 2013, SIP revision is consistent with the requirements of both sections 110(l) and 193 of the Act.

D. SSM SIP Call Considerations

In this action, EPA is not proposing to approve or disapprove revisions to any existing emission limitations that apply during SSM events. EPA notes that on June 12, 2015, the Agency published a formal finding that a number of states have SIPs with SSM provisions that are contrary to the CAA and existing EPA guidance. *See* 80 FR 33840. Accordingly, EPA issued a formal "SIP call" requiring the affected states to make a SIP submission to correct the deficient SSM regulations. *Id.* In that final action, EPA determined that TAPCR Chapter 1200–3–20 has provisions that are contrary to the CAA, specifically paragraph (1) of Rule 1200–3–20–.07, "Report Required upon the Issuance of Notice of Violation." As today's proposed action only deals with the deletion of a separate reporting requirement which is reasonably covered by other requirements, and does not impact the provision of the Tennessee Rule implicated in the SSM SIP call, this proposed action does not contradict the finding of inadequacy regarding Tennessee's Rule 1200–3–20–.07(1).

II. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the TDEC Rule 1200–3–20–.04, entitled "Logs and Reports," effective June 19, 2013, which removed a quarterly reporting requirement for total emissions and for excess emissions during SSM. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the Region 4 office (see the **ADDRESSES** section of this preamble for more information).

III. Proposed Action

EPA is proposing to approve the September 25, 2013, Tennessee SIP revision consisting of removing and reserving paragraph (2) of Rule 1200–3–20–.04, "Logs and Reports" because it is consistent with the CAA and federal regulations governing SIPs.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–17715 Filed 7–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0389; FRL–9949–66–Region 2]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; NJ; Infrastructure SIP Requirements for 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2011 Carbon Monoxide, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS: Interstate Transport Provisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove elements of New Jersey's State Implementation Plan (SIP) revision submitted regarding the infrastructure requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead, 2008 Ozone, 2010 Nitrogen Dioxide (NO_2), 2010 Sulfur Dioxide (SO_2), 2011 Carbon Monoxide (CO), 2006 Particulate Matter of ten microns or less (PM_{10}), and 2012 Particulate Matter of 2.5 microns or less ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements relating to interstate transport provisions concerning the Prevention of Significant Deterioration of Air Quality (PSD) regulations, and visibility protection.

DATES: Comments must be received on or before August 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2016–0389 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3702, or by email at *Fradkin.Kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. EPA's Review
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of a new or revised NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the "infrastructure" SIP because the SIP ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an "interstate transport SIP." Section 110(a)(2)(D)(i) contains two subsections: (D)(i)(I) and (D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (commonly referred to as prong 1), or interfere with maintenance of the NAAQS in any other state (prong 2). Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state.

On March 12, 2008 (73 FR 16436 (March 27, 2008)), EPA promulgated a revised NAAQS for ozone. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm.

On October 15, 2008 (73 FR 66964 (Nov. 12, 2008)), EPA promulgated a new NAAQS, rolling 3-month average NAAQS for lead. The 2008 lead NAAQS is 0.15 micrograms per cubic meter of air ($\mu g/m^3$) maximum (not-to-be-exceeded). On January 22, 2010 (75 FR 6474 (Feb. 9, 2010)), EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. On June 2, 2010 (75 FR 35520 (June 22, 2010)), EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. On December 14, 2012 (78 FR 3086 (Jan. 15, 2013)), EPA promulgated a revised primary NAAQS for $PM_{2.5}$ for the annual standard. The revised standard was set at the level of $12 \mu g/m^3$ calculated as an annual average, which is averaged over a three year period.

On September 21, 2006 (71 FR 61144 (Oct. 17, 2006)), EPA retained the primary and secondary 24-hour PM_{10} standard of 150 $\mu g/m^3$, not to be exceeded more than once per year on average over a 3-year period. The standard was initially promulgated on June 2, 1987 (52 FR 24634 (July 1, 2006)). The PM_{10} standard was also retained on December 14, 2012 (78 FR 3086 (Jan. 15, 2013)). On August 31, 2011, EPA retained the existing primary and secondary standards for CO of 9 ppm as an 8-hour average, and 35 ppm as a 1-hour standard average, neither to be exceeded more than once per year. The standards were initially established on April 30, 1971 (36 FR 8186).

On October 17, 2014 the New Jersey Department of Environmental Protection (NJDEP) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. Although not specifically required by 110(a)(1) since neither NAAQS was new or revised[1], the SIP revision also included infrastructure requirements for the 2006 PM_{10} and 2011 CO NAAQS.

The submittal addressed all four prongs of the interstate transport requirements. On March 30, 2016, New Jersey withdrew the portion of their submittal addressing 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 Ozone NAAQS. EPA subsequently issued a Finding of Failure to Submit to New Jersey.[2]

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[1] EPA notes that, when promulgated, the 2006 24-hour PM_{10} NAAQS and the 2011 primary CO NAAQS were neither "new" nor "revised" NAAQS—they merely retained, without revision, prior NAAQS for those pollutants. Accordingly, promulgation of these NAAQS did not trigger a new obligation for New Jersey to make infrastructure SIP submissions.

This proposed action pertains only to the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(II)(prongs 3 and 4). EPA will address the other portions of the October 17, 2014 infrastructure SIP submittal in a separate action.

II. EPA's Review

Under 110(a)(2)(D)(i)(II) (prong 3) SIPs are required to have provisions prohibiting emissions that would interfere with measures required to be in another state's SIP under part C of the CAA to prevent significant deterioration of air quality.

New Jersey's SIP is not approved with respect to the PSD permit program required by Part C of the CAA. As a result, EPA's regulations at 40 CFR 52.21 have been incorporated into New Jersey's applicable state plan. New Jersey has been delegated authority by EPA to implement 40 CFR 52.21. Although New Jersey has been successfully implementing the program, a state's infrastructure SIP submittal cannot be considered for approvability with respect to prong 3 until EPA has issued final approval of that state's PSD SIP, or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other state's measures to prevent significant deterioration of air quality. Therefore, we are proposing to disapprove New Jersey's 110(a) submissions for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2011 CO, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS for prong 3 of 110(a)(2)(D)(i)(II) because New Jersey is currently subject to a Federal Implementation Plan (FIP) and does not have a PSD SIP. This disapproval will not trigger any sanctions or additional FIP obligation, since the FIP is already in place. This action will have no discernible effect on the current implementation of the PSD program in New Jersey, as the State is already implementing a well-established PSD program through EPA delegation.

In this action, EPA is proposing that, for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2011 CO, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS, New Jersey satisfies the 110(a)(2)(D)(i)(II) requirement for visibility (prong 4). New Jersey addresses visibility protection requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2011 CO, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS through its Regional Haze SIP. EPA approved New Jersey's Regional Haze SIP submittal (77 FR 19 (Jan. 3, 2012)) as part of New Jersey's SIP. The regional haze rule requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

In EPA's approval of New Jersey's Regional Haze Plan, EPA has determined that the plan contains emission reductions needed to achieve New Jersey's share of emission reductions that were determined to be reasonable through the regional planning process. Further, New Jersey's Regional Haze Plan ensures that emissions from the State will not interfere with the Reasonable Progress Goals for neighboring States' Class I areas.

Thus, New Jersey's approved Regional Haze SIP ensures that emissions from sources within the State are not interfering with measures to protect visibility in other states.

III. What action is EPA taking?

EPA is proposing to disapprove the portion of the October 17, 2014 New Jersey SIP submittal for 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2011 CO, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS pertaining to prong 3 CAA section 110(a)(2)(D)(i)(II) regarding interstate transport of air pollution to prevent significant deterioration (PSD) of air quality in other states due to the State's lack of a state adopted PSD program. However, the disapproval will not trigger any sanctions or an additional FIP obligation since a PSD FIP is already in place.

EPA is proposing approval of the portion of the October 17, 2014 New Jersey SIP submittal for 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, 2011 CO, 2006 PM_{10}, and 2012 $PM_{2.5}$ NAAQS pertaining to the CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4).

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by following the directions in the **ADDRESSES** section of this **Federal Register**.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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[2] 81 FR 38963 (June 15, 2016).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur Dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 18, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–17710 Filed 7–26–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 81, No. 144

Wednesday, July 27, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting of the Montana Advisory Committee to the Commission will convene at 1 p.m. (MDT) on Monday, August 29, 2016, at the Al Bedoo Shrine Auditorium, 1125 Broadwater Avenue, Billings, MT 59102. The purpose of the briefing meeting is to gather information from federal and tribal government officials and others regarding bordertown discrimination in Montana. Briefing topics will include discrimination that impacts Native Americans in the areas of education, employment, services, public accommodations, law enforcement, and the legal.

Persons who plan to attend the meeting and require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Rocky Mountain Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Thursday, September 29, 2016. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=259* and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

Welcome and Introductions
  Norma Bixby, Chair, Montana Advisory Committee
  Malee V. Craft, Regional Director, RMRO–USCCR, Denver, CO
Briefing
  Montana Advisory Committee
  Government and Tribal Officials, Advocates, Experts

DATES: Monday, August 29, 2016 (MDT).

ADDRESSES: Al Bedoo Shrine Auditorium, 1125 Broadwater Avenue, Billings, MT 59102.

FOR FURTHER INFORMATION CONTACT: Malee Craft at *mcraft@usccr.gov,* or 303–866–1040.

Dated: July 22, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–17749 Filed 7–26–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Thursday, August 25, 2016, from 11 a.m.–12 p.m. EDT. The Committee will discuss findings and recommendations regarding school discipline policies and practices which may facilitate disparities in juvenile justice involvement and youth incarceration rates on the basis of race, color, disability, or sex, in what has become known as the "School to Prison Pipeline," in preparation to issue a report to the Commission on the topic.

This meeting is open to the public vial the following toll free call in number 888–397–5354 conference ID 2312476. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are invited to make statements during the designated open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and following the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=247* and following the links for "Meeting Details" and then "Documents." Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

1. Welcome and Roll Call
2. Findings and Recommendations: "Civil Rights and the School to Prison Pipeline in Indiana"
3. Open Comment
4. Adjournment

Public Call Information

Dial: 888–397–5354
Conference ID: 2312476

DATES: The meeting will be held on Thursday August 25, 2016, from 11 a.m.–12 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov.*

Dated: July 21, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–17684 Filed 7–26–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Wednesday, August 10, 2016, at 10 a.m. EDT for the purpose of discussing civil rights topics emerging from testimony regarding civil asset forfeiture practices in the state.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–428–9496, conference ID: 5429444. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion of civil asset forfeiture testimony in Michigan
Public Comment
Future Plans and Actions
Adjournment

Public Call Information

Dial: 888–428–9496
Conference ID: 5429444

DATES: The meeting will be held on Wednesday, August 10, 2016, at 10 a.m. EDT.

FOR FURTHER INFORMATION CONTACT: Carolyn Allen at *callen@usccr.gov* or 312–353–8311.

Dated: July 21, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–17685 Filed 7–26–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Community Broadband Summit

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), through the BroadbandUSA program, will hold a regional broadband summit, "Big Sky Broadband Workshop," to share information to help communities build their broadband capacity and utilization. The summit will present best practices and lessons learned from broadband network infrastructure build-outs and digital inclusion programs from Montana and surrounding states, including projects that NTIA awarded through its Broadband Technology Opportunities Program (BTOP) and State Broadband Initiative (SBI) grant programs and funded by the American Recovery and Reinvestment Act of 2009.[1] The summit will also explore effective business and partnership models and will include access to regional policymakers, federal funders, and industry providers.

DATES: The Big Sky Broadband Workshop will be held on August 31, 2016, from 12:00 p.m. to 5:00 p.m., and September 1, 2016, from 9:00 a.m. to 5:00 p.m., Mountain Daylight Time.

ADDRESSES: The meeting will be held in Montana at the Hilton Garden Inn, 3720 N. Reserve St., Missoula, MT 59808.

FOR FURTHER INFORMATION CONTACT: Barbara Brown, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4628, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 280–8260; email: *bbrown@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: NTIA's BroadbandUSA program provides expert advice and field-proven tools for assessing broadband adoption, planning new infrastructure, and engaging a wide range of partners in broadband projects. BroadbandUSA convenes workshops on a regular basis to bring stakeholders together to discuss ways to improve broadband policies, share best practices, and connect communities to other federal agencies and funding sources for the purpose of expanding broadband infrastructure and adoption throughout America's communities.

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[1] American Recovery and Reinvestment Act of 2009, Public Law 11–5, 123 Stat. 115 (2009).

The Big Sky Broadband Workshop features subject matter experts from NTIA's BroadbandUSA initiative and will include NTIA presentations that discuss lessons learned through the implementation of the BTOP and SBI grants. A panel will explore key elements required for successful broadband projects using a mix of regional examples. Topics will include marketing and demand aggregation, outreach, coordinating with government agencies, partnership strategies, construction, and oversight. A second panel will explore why broadband matters in comprehensive community planning and will provide real-world examples about how broadband applications help communities improve economic development, workforce development and education opportunities. A third panel will examine business model options, including private networks, public/private partnerships, co-ops, and municipal systems. Panelists will provide tips to communities on how to research funding options, make a compelling case to funders, and leverage multiple federal and state and non-profit funding streams.

The summit will be open to the public and press. Pre-registration is requested, and space is limited. Portions of the meeting will be webcast. Information on how to pre-register for the meeting and how to access the free, live webcast will be available on NTIA's Web site: *https://www.ntia.doc.gov/other-publication/2016/bigskybroadbandworkshop.* NTIA will ask registrants to provide their first and last names and email addresses for both registration purposes and to receive any updates on the summit. If capacity for the meeting is reached, NTIA will maintain a waiting list and will inform those on the waiting list if space becomes available. Meeting updates, changes in the agenda, if any, and relevant documents will be also available on NTIA's Web site at *https://www.ntia.doc.gov/other-publication/2016/bigskybroadbandworkshop.*

The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as language interpretation or other ancillary aids, are asked to notify Barbara Brown at the contact information listed above at least five (5) business days before the meeting.

Dated: July 22, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–17734 Filed 7–26–16; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* August 26, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/8/2016 (81 FR 20624–20625), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type: Administrative and Contact Center Service
Mandatory for: US Air Force, Total Force Service Center-San Antonio (TFSC–SA), Air Force Personnel Center, Joint Base San Antonio (JBSA) Randolph, JBSA Randolph, TX
Mandatory Source(s) of Supply: Goodwill Industries of San Antonio Contract Services, San Antonio, TX
Contracting Activity: Dept of the Air Force, FA3002 338 SCONS CC, Randolph AFB, TX

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2016–17792 Filed 7–26–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0080]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Office of the Secretary of Defense (OSD) proposes to alter a system of records, DMDC 02 DoD, entitled "Defense Enrollment Eligibility Reporting Systems (DEERS)" last published at 80 FR 68304, November 4, 2015.

The system of records exists to: Record the issuance of Department of Defense (DoD) badges and identification cards; authenticate and identify DoD affiliated personnel; grant physical and logical access to DoD facilities; determine eligibility for DoD entitlements and privileges; support DoD health care management programs; assess manpower, support personnel and readiness functions; and provide appropriate contact information of DoD personnel and beneficiaries for the purpose of conducting surveys authorized by the DoD.

This alteration adds a routine use enabling information from the system of records to be disclosed to national consumer reporting agencies to ensure eligible Service members are afforded protections under the Military Lending Act (MLA) in accordance with 32 CFR 232, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents. In addition, the following Department of Defense (DoD) blanket routine have been applied to this system: Law Enforcement, Disclosure When Requesting Information, Congressional Inquiries Disclosure, Disclosure to the Office of Personnel Management, Disclosure of information to the National Archives and Records Administration, and Data Breach Remediation Purposes. This alteration also reflects administrative changes to the categories of individuals, authorities, and storage sections of the systems of the system of records notice.

DATES: Comments will be accepted on or before August 26, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 6, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: July 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Reporting Systems (DEERS) (November 4, 2015, 80 FR 68304).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Members, former members, retirees, civilian employees (includes non-appropriated fund) and contractor employees of the DoD and all of the Uniformed Services; Presidential appointees of all Federal Government agencies; Medal of Honor recipients; U.S. Military Academy students; DoD and Department of Veterans Affairs (DVA) beneficiaries (*e.g.* dependent family members, legal guardians and other protectors, prior military eligible for DVA benefits, beneficiaries of Servicemembers' Group Life Insurance (SGLI)/Family SGLI (FSGLI)) non-Federal agency civilian associates and other individuals granted DoD privileges, benefits, or physical or logical access to military installations (*e.g.*, American Red Cross paid employees, United Service Organization (USO), Intergovernmental Personnel Act Employees (IPA), Boy and Girl Scout Professionals, non-DoD contract employees); members of the public treated for a medical emergency in a DoD or joint DoD/DVA medical facility; and individuals requiring a Common Access Card to access DoD IT applications (*i.e.*, Department of Homeland Security employees, state National Guard Employees, and Affiliated Volunteers)."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. App. 3, Inspector General Act of 1978; 5 U.S.C. Chapter 90, Long-Term Care Insurance; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Chapter 53, Miscellaneous Rights and Benefits; 10 U.S.C. Chapter 54, Commissary and Exchange Benefits; 10 U.S.C. Chapter 58, Benefits and Services for Members being Separated or Recently Separated; 10 U.S.C. Chapter 75, Deceased Personnel; 10 U.S.C. 2358, Research and Development Projects; 10 U.S.C. Chapter 49 Section 987, Terms of Consumer Credit Extended to Members and Dependents: Limitations; 20 U.S.C. 1070a (f)(4), Higher Education Opportunity Act; 31 U.S.C. 3512(c), Executive Agency Accounting and Other Financial Management Reports and Plans; 42 U.S.C. 18001 note, Patient Protection and Affordable Care Act (Pub. L. 111–148); 52 U.S.C. 20301, Federal Responsibilities; 50 U.S.C. Chapter 23, Internal Security; 50 U.S.C. 501, Servicemembers Civil Relief Act; 38 CFR part 9.20, Traumatic injury protection; 38 U.S.C. Chapter 19, Subchapter III, Service members' Group Life Insurance; DoD Directive 1000.04, Federal Voting Assistance Program (FVAP); DoD Directive 1000.25, DoD Personnel Identity Protection (PIP) Program; DoD Instruction 1015.09, Professional U.S. Scouting Organization Operations at U.S. Military Installations Overseas; DoD Instruction 1100.13, DoD Surveys; DoD Instruction 1241.03, TRICARE Retired Reserve (TRR) Program; DoD Instruction 1241.04, TRICARE Reserve Select (TRS) Program; DoD Instruction 1336.05, Automated Extract of Active Duty Military Personnel Records; DoD Instruction 1341.2, Defense Enrollment Eligibility Reporting System (DEERS) Procedures; DoD Instruction 3001.02, Personnel Accountability in Conjunction with Natural or Manmade Disasters; Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors; DoD Instruction 7730.54, Reserve Components Common Personnel Data System (RCCPDS); and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To Federal agencies and/or their contractors, the Transportation Security Administration and other federal transportation agencies, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or other valid identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, systems, or programs.

2. To Federal and State agencies to validate demographic data (*e.g.,* SSN, citizenship status, date and place of birth, etc.) for individuals in DMDC personnel and pay files so that accurate information is available in support of DoD requirements.

3. To the Social Security Administration for the purpose of verifying an individual's identity.

4. To the Department of Veterans Affairs (DVA):

a. To provide uniformed service personnel (pay, wounded, ill, and injured) identification data for present and former uniformed service personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well-being of veterans and their family members.

b. To provide identifying uniformed service personnel data to the DVA and its insurance program contractor for the purpose of conducting outreach and administration of benefits to qualified Servicemembers, Veterans and their dependents (38 U.S.C. 1977), notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR part 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. To provide former uniformed service personnel and survivor's financial benefit data to DVA for the purpose of identifying retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying uniformed service personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

f. Providing to the Veterans Benefits Administration, DVA uniformed service personnel and financial data for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (10 U.S.C. Chapter 1606—Selected Reserve and 38 U.S.C. Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C. Chapter 1607), and the National Call to Service enlistment educational benefit (10 Chapter 510), the Post 9/11 GI Bill (38 U.S.C. Chapter 33) and The Transferability of Education Assistance to Family Members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

5. To consumer reporting agencies:

a. To obtain identity confirmation and current addresses of separated uniformed services personnel to notify them of potential benefits eligibility.

b. To the national consumer reporting agencies for the purpose of ensuring eligible Service members receive Military Lending Act (MLA) protections in accordance with 32 CFR 232.

7. To Federal Agencies, to include OPM, United States Postal Service, Executive Office of the President and Administrative Office of the Courts; Department of Health and Human Services; Department of Education; Department of Veterans Affairs to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

a. Providing all members of the Reserve Component of the Armed Forces to be matched against the Federal agencies for identifying those Reserve Component Service members that are also Federal civil service employees with eligibility for the Federal Employees Health Benefits (FEHB) program. This disclosure by the Federal agencies will provide the DoD with the FEHB program eligibility and Federal employment information necessary to determine initial and continuing eligibility for the TRICARE Reserve Select (TRS) program and the TRICARE Retired Reserve (TRR) program (collectively referred to as purchased TRICARE programs). Reserve Component members who are not eligible for FEHB program are eligible for TRS (section 1076d of title 10) or TRR (section 1076e of title 10).

b. Providing all members of the Reserve Component of the Armed Forces to be matched against the Federal agencies for the purpose of identifying the Ready Reserve Component Service members who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

c. Providing to the Department of Education for the purpose of identifying dependent children of those Armed Forces members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF), Iraq and Afghanistan Only, for possible benefits.

d. Providing to the Veterans Benefits Administration, DVA uniformed service data for the purpose of determining eligibility and any changes in eligibility status to insure proper administration of benefits for GI Bill education and training benefits under the Montgomery GI Bill (10 U.S.C. Chapter 1606—Selected Reserve and 38 U.S.C. Chapter 30—Active Duty), the Post 9/11 GI Bill (38 U.S.C. Chapter 33).

e. Providing to the Centers for Medicaid and Medicare Services, Department of Health and Human Service, for the purpose of identifying DoD eligible beneficiaries both over and under the age of 65 who are Medicare eligible. Current law requires Defense Health Agency to discontinue military health care benefits to Military Heath Services beneficiaries who are Medicare eligible unless they are enrolled in Medicare Part B.

f. Providing to the Centers for Medicaid and Medicare Services, Department of Health and Human Services, for the purpose of verifying individual's healthcare eligibility status, in accordance with the Affordable Care Act. Data provided to CMS will be used to make eligibility determinations for insurance affordability programs, administered by Medicaid, the Children's Health Insurance Program (CHIP), the Basic Health Program (BHP) and the American Health Benefit Exchange.

8. To Federal agencies for the purpose of notifying Servicemember and dependent individuals of payments or

other benefits for which they are eligible under actions of the Federal agencies.

9. To State agencies for the purpose of supporting State Veteran Affairs activities.

10. To the Department of Labor for unemployment compensation calculations.

11. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

12. To each of the fifty states and the District of Columbia for the purpose of determining the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

13. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. NOTE: Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

14. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether the children of such individuals are or were eligible for DoD healthcare coverage and for what period of time they were eligible. NOTE: Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow state child support enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and Medicaid Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

15. To Coast Guard and Public Health Service to complete Individual Mandate Reporting and Employer Mandate reporting to the Internal Revenue Service (IRS) as required by Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) and Sections 6055 and 6056 of the IRS Code.

16. To Federal and contractor medical personnel at joint DoD/DVA health care clinics, for purposes of authenticating the identity of individuals who are registered as patients at the clinic and maintaining, through the correlation of DoD ID number and Integration Control Number (ICN), a shared population of DoD and DVA beneficiaries who are users of the clinic.

17. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

18. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

19. To Federally Funded Research Centers and grantees for the purpose of performing research on manpower problems for statistical analyses.

20. To Defense contractors to monitor the employment of former DoD employees and uniformed service personnel subject to the provisions of 41 U.S.C. 423.

21. Disclosure of Requested Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

22. To Federal and quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well-being of active duty, reserve, and retired uniformed service personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

23. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

24. To Federal and State agencies for purposes of obtaining socioeconomic information on uniformed service personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

25. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

26. To Coast Guard recruiters in the performance of their assigned duties.

27. Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

28. Disclosure When Requesting Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

29. Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

30. Disclosure to the Office of Personnel Management Routine Use: A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

31. Disclosure of information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

32. Data Breach Remediation Purposes Routine Use. A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found Online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*".

* * * * *

STORAGE:

Delete entry and replace with "Electronic storage media."

* * * * *

[FR Doc. 2016–17796 Filed 7–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Amend Federal Advisory Committee charter.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce it is amending the charter for the Air University Board of Visitors.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.* The DoD is amending the charter for the Air University Board of Visitors ("the Board") previously announced on page 22066 of the **Federal Register**, Volume 81, Number 72, dated April 14, 2016. The Board's charter is being amended to include a second permanent subcommittee and associated increases in the Board's estimated annual costs. The new subcommittee, the Community College of the Air Force (CCAF) Subcommittee, will provide independent assessments of operations at the CCAF and the impact and effectiveness of policies and procedures. The CCAF Subcommittee shall be composed of no more than 15 members who are experts in air power, defense, management, leadership, and academia. All other aspects of the Board's charter, as previously announced, will apply to the Board.

Dated: July 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17777 Filed 7–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Higher Initial Maximum Uniform Allowance Rate

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense.

ACTION: Notice.

SUMMARY: This is the final notice that the Department of Defense (DoD), is establishing a higher initial maximum uniform allowance to procure and issue uniform items for uniformed security guard personnel. This action is pursuant to the authority granted to the DoD by section 591.104 of title 5, Code of Federal Regulations (CFR), which states

that an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under 5 CFR 591.103.

DATES: *Effective Date:* July 31, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Opere, 571–372–1682.

SUPPLEMENTARY INFORMATION: The DoD is implementing a higher initial maximum uniform allowance to procure and issue uniform items for uniformed security guard personnel. This is being established in accordance with 5 CFR 591.104, which states that an agency may establish one or more initial maximum uniform allowance rates greater than the Governmentwide maximum uniform allowance rate established under 5 CFR 591.103. The current $800.00 limit has become inadequate to maintain the uniform standards and professional image expected of Federal uniformed security guards. The uniform items for uniformed security guard personnel include the following items or similar items such as: Winter gloves; battle dress uniform pants and blouses; cold weather and light weight duty jackets; duty sweaters; dress duty trousers; short sleeve summer and long sleeve winter duty dress shirts; jacket and pants rain gear; felt hats; duty caps; high gloss duty shoes; leather duty boots; duty ties; heavy duty battle dress uniform duty coats; cloth uniform insignia patches and cloth uniform badges. The average total uniform cost for the listed items is $1,800.00. Based on these current costs, the DoD is increasing the initial maximum uniform allowance for uniformed security guards to $1,800.00. The number of DoD uniformed security guard personnel affected by this change would be approximately 3,400 employees.

On Thursday, April 7, 2016 (81 FR 20375), the DoD published a notice titled "Higher Initial Maximum Uniform Allowance Rate." The 30-day public comment period ended on May 9, 2016. At the close of the public comment period, no public comments were received. Since no comments were received by the due date, the DoD is proceeding with the establishment of the higher initial maximum uniform allowance rate for uniformed security guard personnel. The effective date of this higher initial maximum uniform allowance rate is July 31, 2016.

Dated: July 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17791 Filed 7–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0065]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB *Number:* Confirmation of Request for Reasonable Accommodation; SD Form 827; OMB Control Number 0704–0498.

Type of Request: Revision.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5.

Needs and Uses: The information collection requirement is necessary to obtain and record requests for reasonable accommodation, with the intent to measure and ensure Agency compliance with Rehabilitation Act of 1973, Public Law 93–112; Rehabilitation Act Amendments of 1992, Public Law 102–569; Americans with Disabilities Act Amendments Act of 2008, Public Law 110–325.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17780 Filed 7–26–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; 5D Analytics, LLC

AGENCY: DoD Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to 5D Analytics, LLC, a revocable, nonassignable, partially exclusive license to practice in the United States, for the Full Life Cycle Status Information System (FLCSIS) (Navy Case No. 200,386) government-owned software for resource allocation planning and management. FLCSIS is designed around the Oracle Relational Database System and provides management information regarding acquired assets, their current configurations, projected configuration changes, and asset initialization information.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 21, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–17742 Filed 7–26–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0052]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for International Student Assessment (PISA 2018) Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0052. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment (PISA 2018) Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 14,392.

Total Estimated Number of Annual Burden Hours: 8,775.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is conducted every three years. The United States has participated in all of the previous cycles, and will participate in 2018 in order to track trends and to compare the performance of U.S. students with that of students in other education systems. PISA 2018 is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, PISA is conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education. In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. PISA emphasizes functional skills that students have acquired as they near the end of mandatory schooling (aged 15 years), and students' knowledge and skills gained both in and out of school environments. PISA 2018 will focus on reading literacy as the major domain. Mathematics and science literacy will also be assessed as minor domains, with additional assessments of global competence and financial literacy. In addition to the cognitive assessments described above, PISA 2018 will include questionnaires administered to assessed students, school principals, and teachers. To prepare for the main study in 2018, NCES will conduct a PISA field test from April–May 2017 to evaluate newly developed assessment and questionnaire items, to test the assessment operations, and to test school recruitment, data collection, and data management procedures. The PISA main study will be conducted in the U.S. from September–November 2018. This submission requests approval for: Recruitment and pre-assessment activities for the 2017 field test sample; administration of the field test; and recruitment of schools for the 2018 main study sample.

Dated: July 21, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17661 Filed 7–26–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0061]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2018 Teaching and Learning International Survey (TALIS 2018) Main Study Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a

previously approved information collection.

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0061. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–343, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2018 Teaching and Learning International Survey (TALIS 2018) Main Study Recruitment and Field Test.

OMB Control Number: 1850–0888.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 1,228.

Total Estimated Number of Annual Burden Hours: 1,949.

Abstract: The Teaching and Learning International Survey (TALIS) is an international survey of teachers and principals that focuses on the working conditions of teachers and the teaching and learning practices in schools. TALIS was first administered in 2008 and is conducted every five years. Having participated in 2013 but not in 2008, the United States will administer TALIS for the second time in 2018. TALIS is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, TALIS is conducted by the National Center for Education Statistics (NCES), of the Institute of Education Sciences within the U.S. Department of Education. TALIS 2018 will address teacher training and professional development, teachers' appraisal, school climate, school leadership, teachers' instructional approaches, and teachers' pedagogical practices. In February 2017, TALIS 2018 field test will be conducted to evaluate newly developed teacher and school questionnaire items and test the survey operations. This request is for recruitment and pre-survey activities for the 2017 field test sample, administration of the field test, and recruitment of schools for the 2018 main study sample.

Dated: July 22, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17771 Filed 7–26–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF TRANSPORTATION

[EPA–HQ–OAR–2015–0827; NHTSA–2016–0068; FRL–9949–54–OAR]

RIN 2060–AS97; RIN 2127–AL76

Notice of Availability of Midterm Evaluation Draft Technical Assessment Report for Model Year 2022–2025 Light Duty Vehicle GHG Emissions and CAFE Standards

AGENCY: Environmental Protection Agency (EPA) and Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have established a coordinated National Program for Federal standards for greenhouse gas (GHG) emissions and corporate average fuel economy (CAFE) for light-duty vehicles. As part of that National Program, EPA and NHTSA, along with the California Air Resources Board (CARB), have jointly prepared and are requesting comment on a Draft Technical Assessment Report. In the Draft Technical Assessment Report, the agencies examine a wide range of issues relevant to GHG emissions and CAFE standards for model years (MY) 2022–2025, and share with the public their initial technical analyses of those issues. EPA is required to prepare the Draft Technical Assessment Report by its rules which establish the Midterm Evaluation. The draft TAR is the first formal step in the Midterm Evaluation process. NHTSA is participating in the Midterm Evaluation process as part of its *de novo* rulemaking to establish final CAFE standards for MY 2022–2025. CARB, in its support of the National Program in lieu of a separate California program, committed to participating in the Midterm Evaluation process. The agencies will fully consider public comments received on the Draft Technical Assessment Report as they proceed with the Midterm Evaluation.

DATES: *Comments:* In order for comments to be most helpful to this ongoing Midterm Evaluation process, the agencies encourage parties wishing to comment on the Draft Technical Assessment Report to submit their comments by September 26, 2016. See the **SUPPLEMENTARY INFORMATION** section for more information about the Midterm

Evaluation process and the Draft Technical Assessment Report.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0827 and/or Docket No. NHTSA–2016–0068, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA and NHTSA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA and NHTSA will not consider comments or comment contents located outside of the submission to the official dockets (*i.e.,* located elsewhere on the web, cloud, or in another file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

NHTSA also allows comments to be submitted by the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Since CARB is a joint author on the Draft Technical Assessment Report, the agencies are requesting that commenters, in addition to submitting comments to the EPA and/or NHTSA docket, also submit their comments directly to CARB at: *http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=drafttar2016-ws.*

FOR FURTHER INFORMATION CONTACT:

EPA: Christopher Lieske, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4584; fax number: 734–214–4816; email address: *lieske.christopher@epa.gov*

NHTSA: Rebecca Yoon, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992, email: *rebecca.yoon@dot.gov.*

SUPPLEMENTARY INFORMATION:

A. Public Participation

NHTSA and EPA request comment on all aspects of the Draft Technical Assessment Report discussed below. This section describes how you can participate in this process.

How do I prepare and submit comments?

For the convenience of all parties, comments submitted to the EPA docket will be considered comments submitted to the NHTSA docket, and vice versa. Therefore, commenters only need to submit comments to either one of the two agency dockets, although they may choose to submit comments to both. Comments that are submitted for consideration by one agency should be identified as such, and comments that are submitted for consideration by both agencies should be identified as such. Absent such identification, each agency will exercise its best judgment to determine whether a comment is directed at its individual work.

Further instructions for submitting comments to either the EPA or NHTSA docket are described below.

EPA: Direct your comments to Docket ID No. EPA–HQ–OAR–2015–0827. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.[1] Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

NHTSA: Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number NHTSA–2016–0068 in your comments. Your comments must not be more than 15 pages long. NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agencies to search and copy certain portions of your submissions. Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by the agencies, it must meet the information quality standards set forth in the OMB and Department of Transportation (DOT) Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.dot.gov/dataquality.htm.*

Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

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[1] This statement constitutes notice to commenters pursuant to 40 CFR 2.209(c) that EPA will share confidential information received with NHTSA unless commenters specify that they wish to submit their CBI only to EPA and not to both agencies.

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

How can I be sure that my comments were received?

NHTSA: If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

Any confidential business information (CBI) submitted to one of the agencies will also be available to the other agency. However, as with all public comments, any CBI information only needs to be submitted to either one of the agencies' dockets and it will be available to the other. Following are specific instructions for submitting CBI to either agency.

EPA: Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

NHTSA: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given below under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[2]

In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also read the materials at the EPA Docket Center (details provided at *https://www.epa.gov/dockets/epa-docket-center-reading-room*) or NHTSA Docket Management Facility by going to the street addresses given above under **ADDRESSES**.

B. Overview of the Midterm Evaluation and the Draft Technical Assessment Report

The EPA and NHTSA have conducted two joint rulemakings to establish a coordinated National Program for stringent Federal CAFE and GHG emissions standards for light-duty vehicles. The agencies finalized the first set of National Program standards covering MYs 2012–2016 in May 2010[3] and the second set of standards, covering MYs 2017–2025 for EPA and final standards for 2017–2021 and augural standards for 2022 to 2025 for NHTSA, in October 2012.[4] The National Program establishes standards that increase in stringency year-over-year from MY 2012 through the final years of the program. Through the coordination of the National Program with the California standards, automakers can build one single fleet of vehicles across the U.S. that satisfies all applicable requirements, and consumers can continue to have a full range of vehicle choices that meet their needs. In the 2012 final rule, the agencies projected that the National Program would reach a level by 2025 that nearly doubles fuel economy and cuts GHG emissions in half as compared to MY 2008, and would reduce carbon dioxide (CO_2) pollution by 6 billion metric tons and oil consumption by 12 billion barrels over the lifetime of MY 2012–2025 vehicles. In addition, the standards are projected to provide significant savings for consumers due to reduced fuel use, and thus reduced expenditures on fuel.

The rulemaking establishing the National Program for MY 2017–2025 light-duty vehicles included a regulatory requirement for EPA to conduct a Midterm Evaluation (MTE) of the GHG standards established for MYs 2022–2025.[5] The 2012 final rule preamble also states that "[t]he mid-term evaluation reflects the rules' long time frame, and, for NHTSA, the agency's statutory obligation to conduct a *de novo* rulemaking in order to establish final standards for MYs 2022–2025." NHTSA will consider information gathered as part of the MTE record, including information submitted through public comments, in the comprehensive *de novo* rulemaking it must undertake to set CAFE standards for MYs 2022–2025. Through the MTE, EPA will determine no later than April 1, 2018 whether the GHG standards for MYs 2022–2025, established in 2012, are still appropriate, within the meaning of section 202(a) of the Clean Air Act, in light of the record then before the Administrator, given the latest available data and information. See 40 CFR 86.1818–12(h). EPA's decision could go one of three ways: The standards remain appropriate, the standards should be less stringent, or the standards should be more stringent. In addition, "[i]n order to align the agencies' proceedings for MYs 2022–2025 and to maintain a joint national program, EPA and NHTSA will finalize their actions related to MYs 2022–2025 standard concurrently. If the EPA determination is that the standards may change, the agencies will issue a joint NPRM and joint final rules." See 77 FR 62628 (October 15, 2012).

The MTE is a collaborative, data-driven, and transparent process that will be a holistic assessment of all of factors considered in standards setting, and the expected impact of those factors on manufacturers' ability to comply, without placing decisive weight on any particular factor or projection. See 77 FR 62784 (October 15, 2012). The MTE analysis is to be as robust and comprehensive as that in the original 2012 final rule. *Id.* EPA and NHTSA also are closely coordinating with the California Air Resources Board (CARB) in conducting the MTE to better ensure the continuation of the National Program. *Id.* The agencies fully expect to conduct the MTE in close coordination with CARB.

The Draft TAR is the first formal step in the MTE process and is being issued jointly by EPA, NHTSA, and CARB for public comment. EPA is required to prepare and seek public comment on the Draft TAR.[6] The Draft TAR is a technical report, not a decision document. The Draft TAR is an opportunity for all three agencies to share with the public the initial technical analyses of a wide range of issues relevant to the MY 2022–2025 standards. The Draft TAR is a first step in the process that will ultimately inform, for EPA, whether the MY 2022–2025 GHG standards adopted by EPA in 2012 should remain in place or should change, and, for NHTSA, what MY 2022–2025 CAFE standards will be maximum feasible under the Energy Policy and Conservation Act (EPCA), as amended by the Energy Independence and Security Act (EISA) of 2007 (49 U.S.C. 32902). The preamble to the 2012 final rule states that "[t]he TAR will examine the same issues and underlying analyses and projections considered in the original rulemaking including technical and other analyses related to each agency's authority to set standards as well as any relevant new issues that may present themselves." 77 FR 62784 (October 15, 2012).

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[2] See 49 CFR part 512.

[3] 75 FR 25324, May 7, 2010.

[4] 77 FR 62624, October 15, 2012.

[5] See 40 CFR 86.1818–12(h).

The agencies have conducted extensive research and analyses to support the MTE, as discussed throughout the Draft TAR. As part of gathering robust data and information to inform the MTE, the agencies also have conducted extensive outreach with a wide range of stakeholders—including auto manufacturers, automotive suppliers, non-governmental organizations, consumer groups, labor unions, state and local governments, the academic and research communities, and others. Among other things, the Draft TAR presents analyses reflecting this research and information obtained during the agencies' outreach, presents updated assessments of available technologies' effectiveness and costs since the 2012 final rule, and offers an opportunity for public comment on the agencies' analyses thus far. The agencies will fully consider public comments on the Draft TAR as they continue the MTE process.

The Draft TAR and related materials are available in the public dockets for this action (see **ADDRESSES** above) and at *https://www3.epa.gov/otaq/climate/mte.htm* and *http://www.nhtsa.gov/Laws+&+Regulations/CAFE+-+Fuel+Economy/ld-cafe-midterm-evaluation-2022-25.*

Dated: July 15, 2016.

Anthony R. Foxx,

Secretary, Department of Transportation.

Dated: July 15, 2016.

Gina McCarthy,

Administrator, Environmental Protection Agency.

[FR Doc. 2016–17649 Filed 7–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2016–0467; FRL–9949–80–ORD]

Board of Scientific Counselors Safe and Sustainable Water Resources Subcommittee; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the Board of Scientific Counselors (BOSC) Safe and Sustainable Water Resources Subcommittee (SSWR) will host a public meeting at the Hyatt Regency in Cincinnati, Ohio, convening on Wednesday, August 24, 2016, from 8:30 a.m. to 5:00 p.m.; and Thursday, August 25, 2016, 8:00 a.m. to 3:00 p.m. Eastern Time. The focus of the meeting will be on discussing the Safe and Sustainable Water Resources Strategic Research Action Plan's water systems research. There will be a public comment period from 10:45 a.m. to 11:15 a.m. Eastern Time on August 25, 2016.

For information on registering to attend the meeting or to provide public comment, please see the **SUPPLEMENTARY INFORMATION** section below. Pre-registration is required. The deadline to sign up to speak during the public comment period closes August 19, 2016. The deadline to submit written public comment is August 22, 2016.

DATES: The BOSC SSWR meeting will be held on Wednesday, August 24, 2016, from 8:30 a.m. to 5:00 p.m.; and Thursday, August 25, 2016, 8:00 a.m. to 3:00 p.m. All times noted are Eastern Time and are approximate.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the meeting should be directed to Tom Tracy, Designated Federal Officer, Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460, by telephone at 202–564–6518; fax at 202–565–2911; or via email at *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: The Charter of the BOSC states that the advisory committee shall provide independent advice to the Administrator on technical and management aspects of the ORD's research program. Additional information about the BOSC is available at: *http://www2.epa.gov/bosc.*

Registration: In order to attend the meeting you must register at the following site: *http://www.eventbrite.com/e/us-epa-bosc-safe-and-sustainable-water-resources-subcommittee-tickets-26329523313.* Once you have completed the online registration, you will be contacted and provided with the meeting information and ticket.

Oral Statements: Members of the public who wish to provide oral comment during the meeting must preregister. Individuals or groups making remarks during the public comment period will be limited to five (5) minutes. To accommodate the number of people who want to address the BOSC SSWR Subcommittee, only one representative of a particular community, organization, or group will be allowed to speak.

Written Statements: Written comments for the public meeting must be received by Monday, August 22, 2016, and will be included in the materials distributed to the BOSC SSWR Subcommittee prior to the meeting. Written comments should be sent to Tom Tracy, Environmental Protection Agency, via email at *tracy.tom@epa.gov* or by mail to 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460, or submitted through *regulations.gov,* Docket ID No. EPA–HQ–ORD–2015–0467. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted online at *regulations.gov.*

Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Tom Tracy, at 202–564–6518 or via email at *tracy.tom@epa.gov.* To request special accommodations, please contact Tom Tracy no later than August 19, 2016, to give the Environmental Protection Agency sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION** section above.

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[6] See 40 CFR 86.1818–12(h)(2)(i).

Dated: July 21, 2016.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2016–17788 Filed 7–26–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *OakStar Bancshares, Inc.*, Springfield, Missouri; to acquire 100 percent of Bancshares of Urbana, Inc., Urbana Missouri, and thereby indirectly acquire The Bank of Urbana, Urbana, Missouri.

Board of Governors of the Federal Reserve System, July 22, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17769 Filed 7–26–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Betty J. Miller Trust #1, Lake in the Hills, Illinois and Wayne M. Miller as Successor Trustee, the Wayne M. Miller Trust #1, Lake in the Hills, Illinois and Wayne M. Miller as Trustee, and Vernon L. Miller, Princeville, Illinois,* to retain shares of Waterman Bancshares, Inc., Waterman, Illinois, and thereby indirectly retain shares of Waterman State Bank, both in Waterman, Illinois.

Board of Governors of the Federal Reserve System, July 22, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17770 Filed 7–26–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16ZX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Environmental Public Health Tracking Network (Tracking Network)—Existing Collection in use without an OMB Control Number—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In September, 2000, the Pew Environmental Health Commission issued a report entitled "America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network." In this report, the Commission documented that the existing environmental health systems were inadequate and fragmented and recommended a "Nationwide Health Tracking Network for disease and exposures." In response to the report, Congress appropriated funds in the fiscal year 2002's budget for the CDC to establish the National Environmental Public Health Tracking Network (Tracking Network).

Continuously since 2008, and at the national level, the program collects data from (1) other CDC programs such as the National Center for Health Statistics, (2) other federal agencies such as the Environmental Protection Agency, (3) publically accessible systems such as the Census Bureau, and (4) funded and unfunded state and local health departments (SLHD). These data are integrated into and disseminated from the Tracking Network and used for analyses which can inform national programs, interventions, or policies; guide further development and activities within the Tracking Program; or advance the practice and science of environmental public health tracking. The Tracking Program also collects information from funded SLHD to monitor their progress related to their funding and for program evaluation. This information collection request (ICR) is focused on data and information gathered by the Tracking Program from SLHD.

Due to voluntary program efforts to continuously improve compliance, the CDC recently determined that the Paperwork Reduction Act (PRA) should apply to the Tracking Network collections. Thus, the CDC requests a three-year PRA clearance to collect these data.

One part of the collection involves health, exposure, and hazard data from SLHD. The Tracking Network provides the United States with accurate and timely standardized data from existing health, exposure, and hazard surveillance systems and supports ongoing efforts within the public health and environmental sectors. The goal of the Tracking Network is to improve health tracking, exposure and hazard monitoring, and response capacity. When such data are available, the Tracking Program obtains data from national or public sources in order to reduce the burden on SLHD. When data are not available nationally or publically, the Tracking Program relies on funded SLHD to obtain and submit these data to the Tracking Network. Data from unfunded SLHD are accepted but not requested or solicited.

Data submitted annually by SLHD to the Tracking Program include: (1) Birth defects prevalence, (2) childhood lead blood levels, if a SLHD does not already report such data to CDC, (3) community drinking water monitoring, (4) emergency department visits, (5) hospitalizations, and (6) radon testing. The Tracking Program receives childhood lead blood levels data from CDC's Childhood Lead Poisoning Prevention Program (under the Healthy Homes and Lead Poisoning Surveillance System [HHLPSS—OMB Control No. 0920–0931, expiration date 5/31/2018]). A metadata record, a file describing the original source and collection procedures for the data being submitted, is also submitted with each dataset (1 per dataset for a total of 6 metadata records per year) using the Tracking Program's metadata creation tool.

Standardized extraction, formatting, and submission processes are developed in collaboration between CDC and SLHD for each dataset. Additions or modifications to these standardized datasets will also be developed collaboratively in order to improve the accuracy, completeness, efficiency, or utility of data submitted to CDC. Such changes will occur at most once a year. Examples of changes to data processes may include: (1) Addition of new variables or outcomes, (2) updates to case definitions, (3) modifications to temporal or spatial aggregation, and (4) changes in formatting for submission. As required, the Tracking Network will submit future additions and modifications as nonsubstantive change requests or revision ICRs.

The other part of the collection involves program monitoring information from funded SLHD. In addition to standard reporting required by CDC's Procurement and Grants Office, the Tracking Program also collects information from funded SLHD for the purposes of program evaluation and monitoring. This information includes performance measures collected quarterly, a communications plan collected annually, an earned values management report collected quarterly, an evaluation plan collected annually, and Web site analytics collected quarterly as documents emailed to the Tracking Program.

There are no costs for the respondents other than their time. The total estimated time burden is 25,320 hours. This estimate includes the time it takes to extract the data from the original data source(s), standardize and format the data to match the corresponding Tracking Network data form, and submit the data to the Tracking Network. In some cases, the data at the source are centralized and easily extracted. In other cases, like for radon data, the data are not. In those cases, the number of hours for extracting and standardizing the data is much greater. Four respondents have been added to the 26 SLHDs the program currently funds to account for the data voluntarily received from unfunded SLHDs and to allow for potential program growth over the next three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State and local health department	Birth defects prevalence	22	1	80
	Childhood lead blood levels	18	1	80
	Community drinking water monitoring	30	1	120
	Emergency department visits	26	1	80
	Hospitalizations	30	1	80
	Radon testing	16	1	120
	Metadata records	30	6	20
	Program Management Tool (new awardees)	26	4	20
	Public Health Action Report (existing awardees).	4	4	20
	Communications plan	30	1	20
	Earned value management report	30	4	40
	Evaluation and performance measurement strategy report.	30	1	20
	Website analytics	30	4	1

Jeffrey M. Zirger,

Health Scientist, Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–17716 Filed 7–26–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority: Office of the Deputy Assistant Secretary for Administration; Office of the Assistant Secretary

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has reorganized the Office of the Deputy Assistant Secretary for Administration (ODASA). This reorganization moves the Office of Information Services from ODASA and establishes it as the new Office of the Chief Information Officer, which reports directly to the Assistant Secretary for Children and Families.

FOR FURTHER INFORMATION CONTACT: Lila Lee, Office of Administration, Chief of Staff, 330 C Street SW., Washington, DC 20201, (202) 401–5329.

SUPPLEMENTARY INFORMATION: Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) is being amended at Chapter K, Administration for Children and Families, as last amended at 81 FR 7346–7351, February 11, 2016, Chapter KP, Office of the Deputy Assistant Secretary for Administration (ODASA), as last amended at 75 FR 42760–42762, July 22, 2010 and most recently at 77 FR 67653–67655, November 13, 2012, as follows:

I. Under Chapter K, Administration for Children and Families, delete Section K.10, in in its entirety and replace with the following:

K.10 Organization. The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (HHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition to the Assistant Secretary, the Administration consists of the Principal Deputy Assistant Secretary, the Chief of Staff, the Deputy Assistant Secretary for Administration, the Deputy Assistant Secretary for Policy, the Deputy Assistant Secretary for Early Childhood Development, the Deputy Assistant Secretary for External Affairs, and Staff and Program Offices. ACF is organized as follows:

Office of the Assistant Secretary for Children and Families (KA)
Administration on Children, Youth and Families (KB)
Administration for Native Americans (KE)
Office of Child Support Enforcement (KF)
Office of Community Services (KG)
Office of Family Assistance (KH)
Office of Regional Operations (KJ)
Office of Planning, Research and Evaluation (KM)
Office of Communications (KN)
Office of the Deputy Assistant Secretary for Administration (KP)
Office of the Chief Information Officer (KQ)
Office of Refugee Resettlement (KR)
Office of Legislative Affairs and Budget (KT)
Office of Head Start (KU)
Office of Child Care (KV)
Office of Human Services Emergency Preparedness and Response (KW)

II. Under Chapter KQ, Create the Office of the Chief Information Officer:

KQ.00 MISSION. The mission of the Office of the Chief Information Officer (OCIO) is to obtain, procure, or develop cost effective and efficient information technology (IT) solutions that enable ACF's staff and grantees to successfully fulfill programmatic missions that result in the realization of the ACF vision. The OCIO implements IT strategies, policies, and governance frameworks to improve the efficiency and performance of ACF's IT systems that support ACF business processes in a manner that balances risk and cost with required outcomes, while ensuring compliance with all federal statutes and regulations. OCIO has ACF-wide responsibility for the direction and development of ACF's IT acquisition strategy, planning analysis and approval, management of IT investments both pre- and post-award, and leadership of key technology initiatives. The OCIO provides oversight and guidance on the use of business process reengineering, performance measurement, and continuous process improvement in the development, operation, and application of information systems and infrastructure. The OCIO manages cross-organizational stakeholder relations to maintain a flexible and adaptive IT posture that supports a resilient risk management approach to IT security and privacy. The OCIO creates policies to provide improved management of information resources and technology to more efficiently and effectively service ACF's internal and external clients and ACF employees. The OCIO will identify the appropriate continuing education for staff in the domain of records management, IT security and privacy, and incident response protocols.

KQ.10 ORGANIZATION. The OCIO is headed by the ACF Chief Information Officer (CIO) who also serves as ACF's Principal Information Resource Management Official, and consists of:

Office of the Director (KQ)
Division of IT Acquisition and Vendor Management (KQ1)
Division of Strategy, Policy, and Governance (KQ2)
Division of Security, Privacy, and Risk Management (KQ3)
Division of Infrastructure, Data and Web Services (KQ4)

KQ.20 FUNCTIONS. The Office of the Director supports the Assistant Secretary for Children and Families in providing centralized IT policy, procedures, standards, and guidelines. OCIO's responsibilities include strategy, policy, and IT governance, including performance measurement and innovation; security, privacy, and risk management, including business continuity, standardization and oversight of business processes, external compliance, and security strategy and management; financial and vendor management and IT acquisition oversight, including acquisition strategies, technological approaches, performance measurement, vendor selection, cost estimating and optimization; service planning and architecture, including quality management and enterprise architecture; program and project management; portfolio management, applications management, development, and maintenance; IT infrastructure and operations; and data services, big data analytics, and business intelligence.

A. The Division of IT Acquisition and Vendor Management provides financial and vendor management and IT acquisition oversight, including acquisition strategies, technological approaches, performance measurement, vendor selection, cost estimating and optimization; and provides procurement support and post-award oversight.

B. The Division of Strategy, Policy, and Governance responsibilities include strategy, policy, and IT governance, including performance measurement and innovation. Provides governance and oversight of centralized enterprise-wide IT functions, including enterprise architecture, creation and maintenance of the technology roadmap.

C. The Division of Security, Privacy, and Risk Management provides security, privacy, and risk management, including business continuity, standardization and oversight of business processes, external compliance, and security strategy and management. The OCIO will identify the appropriate continuing education for staff in the domain of records management, IT security and privacy, and incident response protocols.

D. The Division of Infrastructure, Data and Web Services provides service planning and architecture, program and project management, portfolio management, applications management, development and maintenance, and IT infrastructure and operations, including data services, big data analytics, and business intelligence.

III. Under KP, Office of the Deputy Assistant Secretary for Administration, delete KP.00 Mission in its entirety and replace with:

KP.00 MISSION. The Deputy Assistant Secretary for Administration serves as principal advisor to the Assistant Secretary for Children and Families on all aspects of personnel administration and management; financial management activities; grants policy and overseeing the issuance of grants; acquisition advisory services; the ethics program; staff development and training activities; organizational development and organizational analysis; administrative services; and facilities management. The Deputy Assistant Secretary for Administration oversees the Diversity Management and Equal Employment Opportunity program and all administrative special initiative activities for ACF.

IV. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, delete KP.10 Organization in its entirety and replace with:

KP.10 ORGANIZATION. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Immediate Office of the Deputy Assistant Secretary for Administration (KPA)
Office of Financial Services (KPC)
Office of Workforce Planning and Development (KPD)
Office of Grants Management (KPG)
Grants Management Regional Units (KPGDI–X)
Office of Diversity Management and Equal Employment Opportunity (KPH)

V. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, Delete KP.20 Functions, Paragraph B, Office of Information Systems, in its entirety.

VI. Under Chapter KN, Office of Communications, delete KN.20, Functions, Paragraph C, in its entirety and replace with the following:

Division of Digital Information is responsible for the content of ACF's public-facing digital presence. It also coordinates printing services for ACF. The division conducts preparation and clearance of ACF communications associated with web content, audiovisual products, digital publications and graphic designs, but does not include planning, budgeting, and oversight of the Web site maintenance and support contract. It provides guidance and support to program offices related to web content, social media, print publications, audio-visual materials, and digital information and communication activities.

VII. *Delegation of Authority*. Pending further redelegation, directives, or orders made by the Assistant Secretary for Children and Families or Deputy Assistant Secretary for Administration, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

VIII. *Funds, Personnel, and Equipment*. Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

Dated: July 21, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2016–17737 Filed 7–26–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public to attend in person at the FDA White Oak campus in Silver Spring, MD. Members will participate via teleconference.

DATES: The meeting will be held on October 13, 2016, from 1 p.m. to 4:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm*. For those unable to attend in person, the meeting will also be Webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac101316/*.

FOR FURTHER INFORMATION CONTACT: Sujata Vijh or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, at 240–402–7107, *sujata.vijh@fda.hhs.gov* and 240–402–8072, *rosanna.harvey@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On October 13, 2016, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in an influenza virus vaccine for the 2017 southern hemisphere influenza season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 3, 2016. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 23, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 26, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sujata Vijh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 21, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–17729 Filed 7–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0007]

Generic Drug User Fee—Abbreviated New Drug Application, Prior Approval Supplement, Drug Master File, Final Dosage Form Facility, and Active Pharmaceutical Ingredient Facility Fee Rates for Fiscal Year 2017

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for abbreviated new drug applications (ANDAs), prior approval supplements to an approved ANDA (PASs), drug master files (DMFs), generic drug active pharmaceutical ingredient (API) facilities, and finished dosage form (FDF) facilities user fees related to the Generic Drug User Fee Program for fiscal year (FY) 2017. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), authorizes FDA to assess and collect user fees for certain applications and supplements for human generic drug products, on applications in the backlog as of October 1, 2012 (only applicable to FY 2013), on FDF and API facilities, and on type II active pharmaceutical ingredient DMFs to be made available for reference. This document establishes the fee rates for FY 2017.

FOR FURTHER INFORMATION CONTACT: David Haas, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14202I, Silver Spring, MD 20993–0002, 240–402–9845.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain applications in the backlog as of October 1, 2012 (only applicable to FY 2013); (2) certain types of applications and supplements for human generic drug products; (3) certain facilities where APIs and FDFs are produced; and (4) certain DMFs associated with human generic drug products (see section 744B(a)(1)–(4) of the FD&C Act).

For FY 2017, the generic drug fee rates are: ANDA ($70,480), PAS ($35,240), DMF ($51,140), domestic API facility ($44,234), foreign API facility ($59,234), domestic FDF facility ($258,646), and foreign FDF facility ($273,646). These fees are effective on October 1, 2016, and will remain in effect through September 30, 2017.

Fees for ANDA and PAS will decrease in FY 2017 compared to the FY 2016 fees due to an increase in the number of submissions estimated to be submitted in FY 2017 compared to the estimated number of submissions to be submitted in FY 2016. Fees for DMFs will increase in FY 2017 compared to the FY 2016 fee due to a decrease in the number of submissions estimated to be submitted in FY 2017 compared to the estimated number of submissions to be submitted in 2016. The fees for all types of facilities will increase in FY 2017 compared to the FY 2016 fees in due to a decrease in the number of facilities that self-identified for FY 2017.

II. Fee Revenue Amount for FY 2017

The base revenue amount for FY 2017 is $299 million, as set in the statute prior to the inflation and final year adjustments (see section 744B(c)(2) of the FD&C Act). GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The ANDA, PAS, DMF, API facility, and FDF facility fee calculations for FY 2017 are described in this document.

A. Inflation Adjustment

GDUFA specifies that the $299 million is to be adjusted for inflation increases for FY 2017 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744B(c)(1) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first three of the four preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of human generic drug activities for the first three of the preceding four fiscal years (see section 744B(c)(1)(A)–(B) of the FD&C Act).

Table 1 summarizes the actual cost and total FTE for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2017. The 3-year average is 1.8759 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2013	2014	2015	3-Year average
Total PC&B	$1,927,703,000	$2,054,937,000	$2,232,304,000	
Total FTE	13,974	14,555	15,484	
PC&B per FTE	$137,949	$141,184	$144,168	
% Change from Previous Year	1.1690%	2.3451%	2.1136%	1.8759%

The statute specifies that this 1.8759 percent should be multiplied by the proportion of PC&B expended for human generic drug activities for the first three of the preceding four fiscal years. Table 2 shows the amount of PC&B and the total amount obligated for human generic drug activities from FY 2013 through FY 2015.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS OF HUMAN GENERIC DRUG APPLICATIONS OVER THE LAST 3 YEARS

Fiscal year	2013	2014	2015	3-Year average
PC&B	$117,576,760	$171,612,147	$201,116,305	
Non-PC&B	$149,307,336	$215,469,132	$251,589,013	
Total Costs	$266,884,096	$387,081,279	$452,705,318	
PC&B percent	44.0554%	44.3349%	44.4254%	44.2719%
Non-PC&B percent	55.9446%	55.6651%	55.5746%	55.7281%

The payroll adjustment is 1.8759 percent multiplied by 44.2719 percent (or 0.8305 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2017 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first three of the preceding four years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of human generic drug activities (see section 744B(c)(1)(C) of the FD&C Act). Table 3 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data are published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked "Washington-Baltimore All Items, November 1996=100—CUURA311SA0" and then clicking on the "Retrieve Data" button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR BALTIMORE-WASHINGTON AREA

Year	2013	2014	2015	3-Year average
Annual CPI	152.500	154.847	155.353	
Annual Percent Change	1.5232%	1.5390%	0.3268%	1.1297%

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (1.1297 percent) by the proportion of all costs other than PC&B to total costs of human generic drug activities obligated. Since 44.2719 percent was obligated for PC&B as shown in Table 2, 55.7281 percent is the portion of costs other than PC&B. The non-pay adjustment is 1.1297 percent times 55.7281 percent, or 0.6296 percent.

To complete the inflation adjustment for FY 2017, we add the PC&B component (0.8305 percent) to the non-PC&B component (0.6296 percent) for a total inflation adjustment of 1.4601 percent (rounded) for FY 2017.

GDUFA provides for this inflation adjustment to be compounded after FY 2013 (see section 744B(c)(1) of the FD&C Act). This factor for FY 2017 (1.4601 percent) is compounded by adding one to it, and then multiplying it by the compounded inflation adjustment factor for FY 2016 (1.064759), as published in the **Federal Register** of August 3, 2015 (80 FR 46015). The result of this multiplication of the inflation factors for the four years since FY 2013 (1.014601 times 1.064759 percent) becomes the inflation adjustment for FY 2017. For FY 2017, the inflation adjustment is 8.0306 percent (rounded). We then add one, making 1.080306. Finally, we multiply the FY 2017 base revenue amount ($299 million) by 1.080306, yielding inflation-adjusted target revenue of $323,011,000 (rounded to the nearest thousand dollars).

B. Final Year Adjustment

For FY 2017, the Secretary may, in addition to the inflation adjustment, further increase the fee revenues and fees established if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for human generic drug activities for the first 3 months of FY 2018. Such fees may only be used in FY 2018. If such an adjustment is necessary, the rationale for the amount of the increase shall be contained in the annual notice establishing fee revenues and fees for FY 2017. If the Secretary has carryover balances for such activities in excess of 3 months of such operating reserves, the adjustment shall not be made (see section 744B(c)(2) of the FD&C Act).

After running analyses on the status of GDUFA's operating reserves and its estimated balance as of the beginning of FY 2018, FDA estimates that the GDUFA program will have carryover balances for such activities in excess of 3 months of such operating reserves, thus FDA will not be performing a final year adjustment.

III. ANDA and PAS Fees

Under GDUFA, the FY 2017 ANDA and PAS fees are owed by each applicant that submits an ANDA or a PAS, on or after October 1, 2016. These fees are due on the receipt date of the ANDA or PAS. Section 744B(b)(2)(B) specifies that the ANDA and PAS fees will make up 24 percent of the $323,011,000, which is $77,523,000 (rounded to the nearest thousand dollars), and further specifies that the PAS fee is equal to half the ANDA fee.

In order to calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2017. This is done by assuming ANDAs count as one FAE and PASs (supplements) count as one-half an FAE since the fee for a PAS is one half of the fee for an ANDA. GDUFA also requires, however, that 75 percent of the fee paid for an ANDA or PAS filing fee be refunded if the ANDA or PAS is refused due to issues other than failure to pay fees (section 744B(a)(3)(D) of the FD&C Act). Therefore, an ANDA or PAS that is considered not to have been received by the Secretary due to reasons other than failure to pay fees counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant paid the supplement fee (one half of the full application fee amount).

FDA utilized data from ANDAs and PASs submitted from October 1, 2013, to May 31, 2016, to estimate the number of new original ANDAs and PASs that will incur filing fees in FY 2017. For FY 2017, the Agency estimates that approximately 891 new original ANDAs and 439 PASs will be submitted and incur filing fees. Not all of the new original ANDAs and PASs will be received by the Agency, and some of those not received will be resubmitted in the same fiscal year. Therefore, the Agency expects that the FAE count for ANDAs and PASs will be 1,100 for FY 2017.

The FY 2017 application fee is estimated by dividing the number of FAEs that will pay the fee in FY 2017 (1,100) into the fee revenue amount to be derived from application fees in FY 2017 ($77,523,000). The result, rounded to the nearest $10, is a fee of $70,480 per ANDA. The PAS fee is one-half that amount, or $35,240, rounded to the nearest $10.

The statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients (see section 744B(a)(3)(F) of the FD&C Act). FDA considers that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs and PASs.

IV. DMF Fee

Under GDUFA, the DMF fee is owed by each person that owns a type II active pharmaceutical ingredient DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each individual DMF. This fee is due no later than the date on which the first generic drug submission is submitted that references the associated DMF. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference. Thus, some DMF holders may choose to pay the fee prior to the date that it would otherwise be due in order to have the DMF placed on that list.

In order to calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The statistical forecasting methodology of power regression analysis was selected because this model showed a very good fit to the distribution of DMF submissions over time. Based on data representing the total paid DMFs from October 2013 to May 2016 and projecting a 5-year timeline (October 2013 to September 2018), FDA is estimating 379 fee-paying DMFs for FY 2017.

The FY 2017 DMF fee is determined by dividing the DMF target revenue by the estimated number of fee-paying DMFs in FY 2017. Section 744B(b)(2)(A) specifies that the DMF fees will make up six percent of the $323,011,000, which is $19,381,000 (rounded to the nearest thousand dollars). Dividing the DMF revenue amount ($19,381,000) by the estimated fee-paying DMFs (379), and rounding to the nearest $10, yields a DMF fee of $51,140 for FY 2017.

V. Foreign Facility Fee Differential

Under GDUFA, the fee for a facility located outside the United States and its territories and possessions shall be not less than $15,000 and not more than $30,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions, as determined by the Secretary. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions. For FY 2017, FDA has determined that the differential for foreign facilities will be $15,000.

VI. FDF Facility Fee

Under GDUFA, the annual FDF facility fee is owed by each person that owns a facility which is identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce one or more finished dosage forms of a human generic drug. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF facility fee revenue will make up 56 percent of $323,011,000, which is $180,886,000 (rounded to the nearest thousand dollars).

In order to calculate the FDF fee, FDA used data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012 (77 FR 60125). The total number of FDF facilities identified through self-identification was 675. Of the total facilities identified as FDF, there were 255 domestic facilities and 420 foreign facilities. The foreign facility fee differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (420) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $6,300,000 of the total FDF fee revenue. Subtracting the foreign facility differential fee revenue ($6,300,000), from the total FDF facility target revenue ($180,886,000) results in a remaining fee revenue balance of $174,586,000. To determine the domestic FDF facility fee, we divide the $174,586,000 by the total number of facilities (675) which results in a domestic FDF facility fee of $258,646. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $273,646.

VII. API Facility Fee

Under GDUFA, the annual API facility fee is owed by each person that owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies that the API facility fee will make up 14 percent of $323,011,000 in fee revenue, which is $45,221,000 (rounded down to the nearest thousand dollars).

In order to calculate the API fee, FDA used data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012. The total number of API facilities identified through self-identification was 789. Of the total facilities identified as API facilities, there were 101 domestic facilities and 688 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (688) to determine the total fees that will result from the foreign facility differential. As a result of that calculation, the foreign fee differential will make up $10,320,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($10,320,000) from the total API facility target revenue ($45,221,000) results in a remaining balance of $34,901,000. To determine the domestic API facility fee, we divide the $34,901,000 by the total number of facilities (789) which gives us a domestic API facility fee of $44,234. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $59,234.

VIII. Fee Schedule for FY 2017

The fee rates for FY 2017 are set out in Table 4.

TABLE 4—FEE SCHEDULE FOR FY 2017

Fee category	Fee rates for FY 2017
Applications:	
Abbreviated New Drug Application (ANDA)	$70,480
Prior Approval Supplement (PAS) to an ANDA	35,240
Drug Master File (DMF)	51,140
Facilities:	
Active Pharmaceutical Ingredient (API)—Domestic	44,234
API—Foreign	59,234
Finished Dosage Form (FDF)—Domestic	258,646
FDF—Foreign	273,646

IX. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2016. To pay the ANDA, PAS, DMF, API facility, and FDF facility fee, you must complete a Generic Drug User Fee Cover Sheet, available at *http://www.fda.gov/gdufa*, and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay*. Once you search for your invoice, click "Pay Now" to be redirected to *Pay.gov*. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to utilize *Pay.gov*, a Web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA Web site after completing the Generic Drug User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the wire transfer fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002. The tax identification number of FDA is 53–0196965.

Dated: July 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17801 Filed 7–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2153]

Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices." FDA is issuing this draft guidance to clarify how we evaluate real-world data (RWD) to determine whether it may be sufficiently relevant and reliable to generate the types of real-world evidence that can be used in regulatory decisionmaking for medical devices. This guidance also clarifies when an

investigational device exemption (IDE) may be needed to prospectively collect and use RWD for purposes of determining the safety and effectiveness of a device. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 25, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–2153 for "Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Benjamin Eloff, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2254, Silver Spring, MD 20993–0002, 301–796–8528.

SUPPLEMENTARY INFORMATION:

I. Background

To protect and promote the public health, FDA needs to understand and evaluate the available evidence related to regulated products. For medical devices, available evidence is traditionally comprised of non-clinical and in some cases, clinical studies conducted and provided to FDA by the device manufacturer or sponsor. However, FDA recognizes that a wealth of data covering medical device experience exists and is routinely collected in the course of treatment and management of patients. Under certain circumstances, these RWD may be of sufficient quality to help inform or augment FDA's understanding of the benefit-risk profile of devices at various points in their life cycle, and could potentially be used to aid FDA in regulatory decisionmaking.

This document describes the characteristics and sources of RWD that may be sufficient for use in making various regulatory decisions. Because of its nature, the quality (*i.e.,* relevance and reliability) of RWD can vary greatly across sources. Likewise, there are many types of regulatory decisions with varying levels of evidentiary needs. FDA's evidentiary standards for regulatory decisionmaking are not changing; FDA will evaluate whether the available RWD is of sufficient relevance and reliability to address the specific regulatory decision being considered.

This guidance does not affect any federal, state or local laws or regulations or foreign laws or regulations that may otherwise be applicable to the use or collection of real-world evidence and that provide protections for human subjects or patient privacy. When finalized, this guidance should be used to complement, but not supersede, other device-specific and good clinical practice guidance documents.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Use of Real-World Evidence to Support Regulatory Decisionmaking for Medical Devices" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500012 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E (premarket approval) have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H (humanitarian device exemption) have been approved under OMB control number 0910–0332; the collections of information in 21 CFR part 812 (investigational device exemption) have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 822 (postmarket surveillance) have been approved under OMB control number 0910–0449; the collections of information in 21 CFR part 50.23 (exception from general requirements for informed consent) have been approved under OMB control number 0910–0586; the collections of information in 21 CFR part 54 (financial disclosure by clinical investigators) have been approved under OMB control number 0910–0396; the collections of information in 21 CFR part 56.115 (IRB records) have been approved under OMB control number 0910–0130; and the collections of information in 21 CFR parts 50 (informed consent) and 56 (IRBs) have been approved under OMB control number 0910–0755. The collections of information in the guidance "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910–0756.

Dated: July 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17750 Filed 7–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1439]

Adaptive Designs for Medical Device Clinical Studies; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Adaptive Designs for Medical Device Clinical Studies." This guidance provides sponsors and FDA staff with guidance on how to plan and implement adaptive designs for clinical studies when used in medical device development programs. An adaptive design for a medical device clinical study is defined as a clinical trial design that allows for prospectively planned modifications based on accumulating study data without undermining the trial's integrity and validity. Adaptive designs, when properly implemented, can reduce resource requirements and/or increase the chance of study success.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–1439 for "Adaptive Designs for Medical Device Clinical Studies." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Adaptive Designs for Medical Device Clinical Studies" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Gerry Gray, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2112, Silver Spring, MD 20993–0002, 301–796–6012; or the Division of Biostatistics, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993–0002, 301–796–5750; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance provides sponsors and FDA staff with guidance on how to plan and implement adaptive designs for clinical studies when used in medical device development programs. This document addresses adaptive designs for medical device clinical trials and is applicable to premarket medical device submissions including premarket approval applications (PMA), premarket notification (510(k)) submissions, de novo submissions (evaluation of automatic class III designation), humanitarian device exemption (HDE) applications, and investigational device exemption (IDE) submissions. This guidance can be applied throughout the clinical development program of a medical device, from feasibility studies to pivotal clinical trials. This guidance does not apply to clinical studies of combination products or codevelopment of a pharmaceutical product with an unapproved diagnostic test. The draft guidance was available from May 18, 2015, to August 17, 2015. FDA received 151 comments from seven entities and has incorporated most of them in this final guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Adaptive Designs for Medical Device Clinical Studies." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of "Adaptive Designs for Medical Device Clinical Studies" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUD1500005 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812, have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814,subpart H, have been approved under OMB control number 0910–0332; and the collections of information in the guidance document "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910–0756.

Dated: July 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17651 Filed 7–26–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: August 25, 2016, 9:00 a.m. to 5:00 p.m. (Meeting time is tentative.)

August 26, 2016, 9:00 a.m. to 3:00 p.m. (Meeting time is tentative.)

Place: Webcast and In-Person, 5635 Fishers Lane, Rockville, MD 20852.

Status: The meeting will be open to the public with attendance limited to space availability. Attendees and participants also have the option of viewing the meeting via webcast. Whether attending in-person or via webcast, all attendees and participants must register for the meeting. The registration link is *https://www.blsmeetings.net/ACHDNCAugust2016.* The registration deadline is Friday, August 19, 2016, 11:59 p.m. Eastern Time.

Purpose: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act, Title XI, § 1111, as amended by the Newborn Screening Saves Lives Reauthorization Act of 2014 (Pub. L. 113–240) (42 U.S.C. 300b–10), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/heritable disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans and group and individual health insurance issuers are required to cover evidence-informed care and screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market, policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

Agenda: The Committee will hear presentations and discussions on topics including an introduction on sequencing and potential impact on newborn screening and public health, screening for Lysosomal Storage Disorders, newborn screening timeliness, pilot studies for future nominated conditions, and the National Contingency Plan for Newborn Screening. The Committee will hear updates from the Laboratory Standards and Procedures workgroup, Follow-up and Treatment workgroup, and Education and Training workgroup, Timeliness workgroup, and the Cost Analysis workgroup. Agenda items are subject to changes as priorities indicate. Tentatively, the Committee is expected to review and/or vote on the recommendations regarding the information needed from pilot studies for future nominated conditions. This vote does not involve a proposed addition of a condition to the RUSP. The meeting agenda will be available 2 days prior to the meeting on the Committee's Web site: *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for both days of the meeting. Advance registration is required to present oral comments and/or submit written comments. Registration information is at *https://www.blsmeetings.net/ACHDNCAugust2016.* The registration deadline for public comments is Friday, August 19, 2016, 11:59 p.m. Eastern Time. Written comments must be received by the deadline of Friday, August 5, 2016, 11:59 p.m. Eastern Time to be included in the August meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.*, parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration; email: *aharris@hrsa.gov.*

Contact Person: Anyone interested in obtaining other relevant information should contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18W66, 5600 Fishers Lane, Rockville, Maryland 20857; email: *aharris@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–17724 Filed 7–26–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering, Special Emphasis Panel, Center for Complex Tissues (2017/01).

Date: October 24, 2016.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (240) 451–3398, hayesj@mail.nih.gov.

Dated: July 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17655 Filed 7–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular and Respiratory Sciences.

Date: August 11–12, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive; Bethesda, MD 20892; (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D.; Scientific Review Officer; Center for Scientific Review; National Institutes of Health; 6701 Rockledge Drive, Room 4138, MSC 7814; Bethesda, MD 20892; (301) 435–1195; *Chengy5@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–053: High-End Instrumentation (HEI) Grant Program (S10).

Date: August 18, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda; (Formerly Holiday Inn Select); 8120 Wisconsin Avenue; Bethesda, MD 20814.

Contact Person: Chiayeng Wang, Ph.D.; Scientific Review Officer; Center for Scientific Review; National Institutes of Health; 6701 Rockledge Drive, Room 5213, MSC 7852; Bethesda, MD 20892; 301–435–2397; *chiayeng.wang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17656 Filed 7–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 9, 2016.

Closed: 8:30 a.m. to 9:50 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 9:50 a.m. to 2:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/Pages/Advisory-Groups-and-Review-Committees.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: *July 21, 2016.*

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17654 Filed 7–26–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA SOAR Web-Based Data Form (OMB No. 0930–0329)—REVISION

In 2009 the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services established a Technical Assistance Center to assist in the implementation of the SSI/SSDI Outreach Access and Recovery (SOAR) effort in all states. The primary objective of SOAR is to improve the allowance rate for Social Security Administration (SSA) disability benefits for people who are experiencing or at risk of homelessness, and who have a serious mental illness.

During the SOAR training, the importance of keeping track of SSI/SSDI applications through the process is stressed. In response to requests from states implementing SOAR, the Technical Assistance Center, under SAMHSA's direction, developed a web-based data form that case managers can use to track the progress of submitted applications, including decisions received from SSA either on initial application or on appeal. This password-protected web-based data form is hosted on the SOAR Web site (*https://soartrack.prainc.com*). Use of this form is completely voluntary.

In addition, data from the web-based form can be compiled into reports on decision results and the use of SOAR core components, such as the SSA–1696 Appointment of Representative, which allows SSA to communicate directly with the case manager assisting with the application. These reports will be reviewed by agency directors, SOAR state-level leads, and the national SOAR Technical Assistance Center to quantify the success of the effort overall and to identify areas where additional technical assistance is needed.

The changes to this form include questions on military discharge status, VA disability compensation, applicant earnings per month, number of consultative exams ordered, and whether access to benefits facilitated housing. Additionally, we added three questions to the user registration form that include county, funding source, and SOAR training completed.

The estimated response burden has not changed and is as follows:

Information source	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
SOAR Data Form	700	3	2100	.25	525

Written comments and recommendations concerning the proposed information collection should be sent by August 26, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,
Statistician.

[FR Doc. 2016–17720 Filed 7–26–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0492]

Status of Overboard Detection Technology for Cruise Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of request for comments.

SUMMARY: The Coast Guard is soliciting information on the status and availability of technology for immediately detecting cruise vessel passengers who have fallen overboard.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov* on or before October 25, 2016.

ADDRESSES: You may submit comments and supporting materials identified by docket number USCG–2016–0492 using our online docket at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LT Paul Folino, Office of Design and Engineering Standards (CG–ENG–1), U.S. Coast Guard Headquarters; 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593; telephone 202–372–1361, email *paul.j.folino@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to submit comments or related material on the status of overboard detection technology for cruise vessels. Your comments will help us prepare a report that accurately reflects the status and availability of overboard detection technology for use by the cruise line industry, and also help us better deliberate on international standards development for overboard detection technology. If you submit a comment, please include the docket number for this notice, indicate the specific section in this notice and the question number to which each comment applies, and provide a reason for each suggestion or recommendation. At this time, we do not anticipate publishing a response to the comments received.

We encourage you to submit comments to our online docket at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Material submitted can be viewed by visiting *http://www.regulations.gov* and following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments or other documents are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

II. Purpose

On February 8, 2016, the President signed the Coast Guard Authorization Act of 2015 into law. Section 608 of the Act requires the Coast Guard to provide a report to Congress on the status of technology for immediately detecting passengers who have fallen overboard (man overboard (MOB) incidents) within 18 months of the signing of the Act.

Also, the International Organization for Standardization (ISO) Technical Committee 8 (TC8) Subcommittee 1 (SC1) is developing a standard for MOB detection systems. Input received in response to this notice could influence the Coast Guard's collaborative role in that process.

The Coast Guard, therefore, solicits comments from the public on the status and availability of this MOB detection technology.

III. Information Requested

The Coast Guard requests public comment on the following questions. It would be helpful if commenters answer the questions as specifically as possible, and then provide explanations, if any, for the responses. The content of the questions is specifically directed to overboard detection technology providers and users.

(1) If applicable, what is your position in the maritime community? (Please be as specific as possible, *e.g.*, captain of a cruise of vessel, vessel security officer, owner/operator of a cruise vessel, past/future passenger, advocacy group, professional organization, technology provider etc.)

If you are an MOB detection technology manufacturer or vendor, please answer questions 2 through 25 and 33 through 35. If not, please answer questions 26 through 35.

General

(2) What is the MOB detection technology equipment that you manufacture and what is its status? (Please provide an overall description of the system including make, model, and other pertinent information.)

(3) Is the MOB detection technology built to any recognized standards?

(4) Has the MOB detection technology been tested on any vessels and is it currently used on any vessels?

Reliability/Testing

(5) What is the testing regimen used to validate whether the MOB detection technology system is effective (including developmental lab testing and in-service testing performed on a floating platform)?

(6) How reliable is the equipment? (In describing reliability, it is helpful to give specific, tested metrics instead of open-ended phrases such as "reliable in all sea conditions.")

(7) Was the MOB detection technology tested in sea states, and if so, what states, and what were the subsequent false positive and false negative rates?

(8) In what weather conditions was the MOB detection technology tested and what were the subsequent false positive and false negative rates?

(9) How many times was the control test, described in questions 7 and 8 conducted?

(10) Did the expected reliability match the operational reliability?

(11) In the case of a power outage, does the MOB detection technology system maintain operability?

Detection

(12) What areas of the vessel is the MOB detection technology system designed to monitor?

(13) Can the system detect the size of an object that is falling overboard, *e.g.*, the size of an adult vs. a child or a human vs. a large bird? If so, what size objects can the system detect?

(14) Can the system detect anything else (*e.g.*, heat signatures for fire detection)?

(15) How does the system eliminate false positives of birds and other items that fall overboard?

Maintenance

(16) What is the suggested maintenance and inspection cycle of the MOB detection technology system to ensure its operability?

(17) Does the system require calibration, and if so, what is the calibration interval?

(18) What is the availability of technicians globally to install and service the MOB detection technology system?

(19) Does the marine environment (*i.e.*, sea salt spray) affect the reliability of the system?

(20) What training will be required for use of the MOB detection technology system, and are there any refresher training requirements?

Retrofitting/Integration

(21) Can existing cameras and systems be retrofitted with this MOB detection technology system or is it stand-alone?

(22) How does the system integrate with the ship's existing safety command center?

(23) Is the system designed with any automation features?

(24) Does the system work in tandem with other technologies (*i.e.*, wearable devices)?

(25) How does the alarm system work, where do the alarms sound, and in what way are the alarms visible?

If you are a cruise vessel owner or operator or if you represent a cruise line group or industry organization, please answer questions 26 through 32.

(26) How many cruise vessels use tested MOB detection technology that can detect passengers who have fallen overboard?

(27) If you do not have vessels that use MOB detection technology, is there currently a plan to integrate this technology on cruise vessels?

(28) Has anyone fallen overboard on a cruise vessel while the MOB detection technology was operating?

(29) Did the system alert the crew that someone fell overboard?

(30) How does the alarm system work, where do the alarms sound, and in what way are the alarms visible?

(31) How many cruise vessels use image capture technology for passengers who have fallen overboard?

(32) Did you receive any training on MOB detection technology? If so, please describe it.

(33) What alternative source(s) for detecting persons falling overboard would you recommend? How would you rate the alternative source(s) in terms of: (a) User cost; (b) reliability; and (c) usefulness of the information?

(34) Is there any other technology available that vessels can integrate to assist in facilitating the search and rescue of a passenger who has fallen overboard?

(35) In Section 608 of the 2015 Coast Guard Authorization Act, Congress directs the Coast Guard to consider the cost of MOB detection technology systems when determining feasibility. Our current best available cost data regarding the installation of an MOB detection technology system on an average cruise vessel is $300,000 with annual system maintenance costs of $40,000 per year. Please provide information on the costs of MOB detection technology systems, including costs for equipment and labor for installation, integration, operation, and maintenance on a range of cruise vessel sizes.

Comments regarding these questions and any other pertinent matters that you would like us to consider during the comment period will be taken into account in our future actions regarding the issues raised in this notice. We encourage you to provide your comments as we move forward with drafting the report to Congress.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: July 19, 2016.

B. Hawkins,

Captain, U.S. Coast Guard, Chief, Office of Design and Engineering Standards.

[FR Doc. 2016–17775 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet via conference call on September

13 and 14, 2016. The meeting will be open to the public.

DATES: The TMAC will meet via conference call on Tuesday, September 13, 2016 from 10:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT), and on Wednesday, September 14, 2016 from 10:00 a.m. to 5:00 p.m. EDT. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: For information on how to access to the conference call, information on services for individuals with disabilities, or to request special assistance for the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible. Members of the public who wish to dial in for the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (attention Kathleen Boyer) by 11 a.m. EDT on Monday, September 12, 2016.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the "Supplementary Information" section below. The Agenda and other associated material will be available for review at *www.fema.gov/TMAC* by Friday, September 9, 2016. Written comments to be considered by the committee at the time of the meeting must be received by Monday, September 12, 2016, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on September 13, 2016, from 11:00–11:20 a.m. and September 14, 2016 from 11:00–11:20 a.m. EST. Speakers are requested to limit their comments to no more than two minutes. Each public comment period will not exceed 20 minutes. Please note that the public comment periods may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Monday, September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 500 C Street SW., Washington, DC 20024, telephone (202) 646–4023, and email *kathleen.boyer@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5)(a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an Annual Report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: On September 13 and 14, 2016, the TMAC will review and discuss potential recommendations to be included in the required 2016 TMAC Annual Report. A brief public comment period will take place before any deliberation and vote on each day of the meeting. A more detailed agenda will be posted by September 9, 2016, at *http://www.fema.gov/TMAC.*

Dated: July 14, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–17736 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on August 10–11, 2016 in Reston, VA. The meeting will be open to the public.

DATES: The TMAC will meet on Wednesday, August 10, 2016 from 8:00 a.m.–5:30 p.m. Eastern Daylight Time (EDT), and Thursday, August 11, 2016 from 8:00 a.m.–5:00 p.m. EDT. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in the auditorium of the United States Geological Survey (USGS) headquarters building located at 12201 Sunrise Valley Drive, Reston, VA 20192. Members of the public who wish to attend the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attention: Kathleen Boyer) by 11:00 p.m. EDT on Wednesday, August 3, 2016. Members of the public must check in at the USGS Visitor's entrance security desk; photo identification is required.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT:** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Tuesday, August 2, 2016. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Wednesday, August 3, 2016, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, August 10, 2016, from 4:00 to 4:30 p.m. EDT and again on Thursday, August 11, 2016, from 3:00 to 3:30 p.m. EDT. Speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Tuesday, August 9, 2016.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW., Washington, DC 20024, telephone (202) 646–4023, and email *Kathleen.boyer@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The TMAC will review and discuss potential recommendations for the required 2016 TMAC Annual Report. TMAC members may receive briefings from subject matter experts. In addition, the TMAC members will identify and coordinate on the TMAC's next steps for Annual Report production. A brief public comment period will take place at the beginning of each day during the meeting and prior to any vote. The full agenda and related briefing materials will be posted for review by August 3, 2016 at *http://www.fema.gov/TMAC.*

Dated: July 9, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–17735 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4273–DR; Docket ID FEMA–2016–0001]

West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–4273–DR), dated June 25, 2016, and related determinations.

DATES: Effective on July 13, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 25, 2016.

Braxton, Gilmer, Lewis, Randolph, Upshur, and Wayne Counties for Public Assistance.
Lincoln County for Public Assistance [Categories A and C–G] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–17755 Filed 7–26–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1623]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or

modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 25, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1623, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Upper Suwannee Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Hamilton County, Florida and Incorporated Areas	
Town of White Springs	Town Hall, 10363 Bridge Street, White Springs, FL 32096.
Unincorporated Areas of Hamilton County	Hamilton County Building Department, 204 Northeast 1st Street, Jasper, FL 32052.
Suwannee County, Florida and Incorporated Areas	
Unincorporated Areas of Suwannee County	Suwannee County Planning and Zoning and Floodplain Management Department, 224 Pine Avenue Southwest, Live Oak, FL 32064.

Community	Community map repository address
Mississippi Coastal Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Hancock County, Mississippi and Incorporated Areas	
Unincorporated Areas of Hancock County	Hancock County Government Annex Complex, 854 Highway 90, Suite A, Bay St. Louis, MS 39520.
Harrison County, Mississippi and Incorporated Areas	
City of Biloxi	Community Development Building, 676 Dr. Martin Luther King, Jr. Boulevard, Biloxi, MS 39530.
City of Gulfport	William K. Hardy Building, 1410 24th Avenue, Gulfport, MS 39501.
Unincorporated Areas of Harrison County	Harrison County Code Administration, 15309 Community Road, Gulfport, MS 39503.
Jackson County, Mississippi and Incorporated Areas	
City of Gautier	City Hall, 3330 Highway 90, Gautier, MS 39553.
Unincorporated Areas of Jackson County	Jackson County Planning Department, 2915 Canty Street, Suite Q, Pascagoula, MS 39567.
Pearl River County, Mississippi and Incorporated Areas	
City of Poplarville	City Hall, 200 Highway 26 East, Poplarville, MS 39470.
Unincorporated Areas of Pearl River County	Pearl River County Building Permits and E–911 Office, 402 South Main Street, Poplarville, MS 39470.

II. Non-watershed-based studies:

Community	Community map repository address
Jefferson Parish, Louisiana and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 12–06–0629S Preliminary Date: February 15, 2016	
City of Gretna	City Hall, 740 2nd Street, Gretna, LA 70053.
City of Harahan	City Hall, 6437 Jefferson Highway, Harahan, LA 70123.
City of Kenner	City Hall, 1801 Williams Boulevard, Kenner, LA 70062.
City of Westwego	City Hall, 419 Avenue A, Westwego, LA 70094.
Unincorporated Areas of Jefferson Parish	Joseph S. Yenni Building, 1221 Elmwood Park Boulevard, Jefferson, LA 70123.
Bowie County, Texas and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–06–0058S Preliminary Date: March 24, 2016	
City of Nash	City Hall, 119 Elm Street, Nash, TX 75569.
City of Texarkana	Public Works Department, 919 Elm Street, Texarkana, TX 75504.
City of Wake Village	City Hall, 624 Burma Road, Wake Village, TX 75501.
Unincorporated Areas of Bowie County	Bowie County Courthouse, 710 James Bowie Drive, New Boston, TX 75570.

[FR Doc. 2016–17740 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1633]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Idaho: Ada	Unincorporated Areas of Ada County (15–10–1460P).	Commissioner Dave Case, Chairman, Board of Commissioners, Ada County, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	*http://www.msc.fema.gov/lomc.*	Mar. 9, 2016	160001
Illinois:						
Douglas	City of Tuscola (16–05–0749P).	The Honorable Daniel J. Kleiss, Mayor, City of Tuscola, 214 North Main Street, Tuscola, IL 61953.	City Hall, 214 North Main Street, Tuscola, IL 61953.	*http://www.msc.fema.gov/lomc.*	Aug. 25, 2016	170195

Douglas	Unincorporated Areas of Douglas County (16–05–0749P).	The Honorable Don Munson, Chairman, Douglas County Board, Douglas County Courthouse, P.O. Box 467, Tuscola, IL 61953.	County Courthouse, 401 South Center Street, Tuscola, IL 61953.	*http://www.msc.fema.gov/lomc.*	Aug. 25, 2016	170194
Peoria	City of Peoria (15–05–6957P).	The Honorable Jim Ardis, Mayor, City of Peoria, 419 Fulton Street, Suite 401, Peoria, IL 61602.	Public Works Department, 3505 North Dries Lane, Peoria, IL 61604.	*http://www.msc.fema.gov/lomc.*	Sept. 16, 2016	170536
Iowa:						
Franklin	City of Sheffield (16–07–1093X).	The Honorable Nick Wilson, Mayor, City of Sheffield, City Hall, 110 South 3rd Street, P.O. Box 252, Sheffield, IA 50475.	City Hall, 110 South 3rd Street, Sheffield, IA 50475.	*http://www.msc.fema.gov/lomc.*	Aug. 26, 2016	190132
Polk	City of Grimes (15–07–2236P).	The Honorable Thomas Armstrong, Mayor, City of Grimes, City Hall, 101 Northeast Harvey Street, Grimes, IA 50111.	City Hall, 101 North East Harvey Street, Grimes, IA 50111.	*http://www.msc.fema.gov/lomc.*	Aug. 16, 2016	190228
Polk	Unincorporated Areas of Polk County (15–07–2236P).	Mr. Tom Hockensmith, Board of Supervisors, Polk County, Polk County Administration Building, 111 Court Avenue, Suite 300, Des Moines, IA 50309.	Polk County Public Works, 5885 North East 14th Street, Des Moines, IA 50313.	*http://www.msc.fema.gov/lomc.*	Aug. 16, 2016	190901
Missouri:						
St. Louis	City of Chesterfield (16–07–0481P).	The Honorable Bob Nation, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	City Hall, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	*http://www.msc.fema.gov/lomc.*	Aug. 19, 2016	290896
St. Louis	City of Wildwood (16–07–0481P).	The Honorable Timothy Woerther, Mayor, City of Wildwood, City Hall, 16860 Main Street, Wildwood, MO 63040.	City Hall, 16860 Main Street, Wildwood, MO 63040.	*http://www.msc.fema.gov/lomc.*	Aug. 19, 2016	290922
New Jersey: Passaic.	Borough of Bloomingdale (16–02–0098P).	The Honorable Jonathan Dunleavy, Mayor, Borough of Bloomingdale, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.	Bloomingdale Borough Hall, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.	*http://www.msc.fema.gov/lomc.*	Aug. 23, 2016	345284
Ohio:						
Lucas	City of Oregon (16–05–1552P).	The Honorable Michael J. Seferian, Mayor, City of Oregon, 5330 Seaman Road, Oregon, OH 43616.	City Hall, 5330 Seaman Road, Oregon, OH 43616.	*http://www.msc.fema.gov/lomc.*	Sep. 13, 2016	390361
Tuscarawas	Village of Zoar (16–05–2633P).	The Honorable Scott Gordon, Mayor, Village of Zoar, 250 North Main Street, P.O. Box 544, Zoar, OH 44697.	County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.	*http://www.msc.fema.gov/lomc.*	Sep. 9, 2016	390752
Warren	Unincorporated Areas of Warren County (15–05–6683P).	The Honorable Pat South, Chairperson, Warren County Board of County Commissioners, 406 Justice Drive, 1st Floor, Lebanon, OH 45036.	Warren County Administration Building, 406 Justice Drive, Room 167, Lebanon, OH 45036.	*http://www.msc.fema.gov/lomc.*	Aug. 29, 2016	390757
Oregon:						
Jackson	City of Central Point (16–10–0502P).	The Honorable Hank Williams, Mayor, City of Central Point, 140 South 3rd Street, Central Point, OR 97502.	City of Central Point, 140 South 3rd Street, Central Point, OR 97502.	*http://www.msc.fema.gov/lomc.*	Sep. 14, 2016	410092
Jackson	Unincorporated Areas of Jackson County (16–10–0502P).	Mr. Don Skundrick, Jackson County Commissioner, 10 South Oakdale Avenue, Room 100, Medford, OR 97501.	Jackson County Roads, Parks and Planning Services, 10 South Oakdale Avenue, Medford, OR 97501.	*http://www.msc.fema.gov/lomc.*	Sep. 14, 2016	415589
Texas:						

Dallas	City of Grand Prairie (16–06–1079P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, P.O. Box 534045, Grand Prairie, TX 75053.	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.	*http://www.msc.fema.gov/lomc.*	Sep. 12, 2016	485472
Dallas	City of Irving (16–06–1079P).	The Honorable Beth Van Duyne, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Public Works Department, 825 West Irving Boulevard, Irving, TX 75060.	*http://www.msc.fema.gov/lomc.*	Sep. 12, 2016	480180
Washington: Spokane.	Unincorporated Areas of Spokane County (16–10–0312P).	The Honorable Nancy McLaughlin, County Commissioner, Spokane County, Spokane County Courthouse, 1116 West Broadway Avenue, Spokane, WA 99260.	Public Works Building, 1026 West Broadway Avenue, Spokane, WA 99260.	*http://www.msc.fema.gov/lomc.*	Aug. 26, 2016	530174
Wisconsin:						
Dane	City of Madison (16–05–1781P).	The Honorable Paul R. Soglin, Mayor, City of Madison, Mayor's Office, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	*http://www.msc.fema.gov/lomc.*	Sep. 14, 2016	550083
Dane	Unincorporated Areas of Dane County (16–05–1781P).	The Honorable Joe Parisi, Dane County Executive, City-County Building, 210 Martin Luther King Jr. Boulevard, Room 421, Madison, WI 53703.	City-County Building, 210 Martin Luther King Jr. Boulevard, Room 116, Madison, WI 53703.	*http://www.msc.fema.gov/lomc.*	Sep. 14, 2016	550077
Milwaukee	City of Milwaukee (16–05–0269P).	The Honorable Tom Barrett, Mayor, City of Milwaukee, 200 East Wells Street, Room 201, Milwaukee, WI 53202.	City Hall, 200 East Wells Street, Milwaukee, WI 53202.	*http://www.msc.fema.gov/lomc.*	Sep. 23, 2016	550278
Milwaukee	City of Oak Creek (16–05–0269P).	The Honorable Stephen Scaffidi, Mayor, City of Oak Creek, 8040 South 6th Street, Oak Creek, WI 53154.	City Hall, 8640 South Howell Avenue, Oak Creek, WI 53154.	*http://www.msc.fema.gov/lomc.*	Sep. 23, 2016	550279

[FR Doc. 2016–17730 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4272–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4272–DR), dated June 11, 2016, and related determinations.

DATES: *Effective Date:* July 8, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 11, 2016.

Bandera, Brown, Caldwell, Houston, Jasper, and Polk Counties for Public Assistance.

Bastrop, Eastland, Fayette, and Kleberg Counties for Public Assistance (already designated for Individual Assistance.)

Fort Bend, Grimes, Hood, San Jacinto, and Washington Counties for Public Assistance [Categories A and C–G] (already designated for Individual Assistance and emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program.)

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–17758 Filed 7–26–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of November 4, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Humboldt County, California and Incorporated Areas Docket No.: FEMA–B–1511	
City of Arcata	City of Arcata, 525 9th Street, Arcata, CA 95521.
City of Blue Lake	City of Blue Lake, 111 Greenwood Avenue, Blue Lake, CA 95525.
City of Eureka	Public Works Department, City Hall, 531 K Street, Eureka, CA 95501.
City of Ferndale	Public Works Department, 834 Main Street, Ferndale, CA 95536.
City of Fortuna	Fortuna City Hall, 621 11th Street, Fortuna, CA 95540.
Unincorporated Areas of Humboldt County	Clark Complex, 3015 H Street, Eureka, CA 95501.
Clinton County, Iowa and Incorporated Areas Docket No.: FEMA–B–1532	
City of Clinton	City Hall, 611 South 3rd Street, Clinton, IA 52732.
Muscatine County, Iowa and Incorporated Areas Docket No.: FEMA–B–1529	
City of Muscatine	City Hall, Community Development Department, 215 Sycamore Street, Muscatine, IA 52761.
Unincorporated Areas of Muscatine	Muscatine County Zoning Office, 3610 Park Avenue West, Muscatine, IA 52761.
Hennepin County, Minnesota and Incorporated Areas Docket No.: FEMA–B–1284	
City of Bloomington	Engineering Department, 1700 West 98th Street, Bloomington, MN 55431.
City of Brooklyn Center	City Hall, 6301 Shingle Creek Parkway, Brooklyn Center, MN 55430.
City of Brooklyn Park	City Hall, 5200 85th Avenue North, Brooklyn Park, MN 55443.
City of Champlin	City Hall, Building Department, 11955 Champlin Drive, Champlin, MN 55316.
City of Dayton	City Hall, 12260 South Diamond Lake Road, Dayton, MN 55327.
City of Eden Prairie	City Hall, 8080 Mitchell Road, Eden Prairie, MN 55344.
City of Edina	City Hall, 4801 West 50th Street, Edina, MN 55424.
City of Greenfield	City Hall, 7738 Commerce Circle, Greenfield, MN 55373.
City of Hanover	City Hall, 11250 Northeast 5th Street, Hanover, MN 55341.

Community	Community map repository address
City of Hopkins	City Hall, Planning and Zoning Office, 1010 1st Street South, Hopkins, MN 55343.
City of Independence	City Hall, 1920 County Road 90, Independence, MN 55359.
City of Long Lake	City Hall, 450 Virginia Avenue, Long Lake, MN 55356.
City of Minneapolis	City Hall, Public Works Office, 350 South 5th Street, Minneapolis, MN 55415.
City of Minnetonka	City Hall, 14600 Minnetonka Boulevard, Minnetonka, MN 55345.
City of Minnetrista	City Hall, 7701 County Road 110 West, Minnetrista, MN 55364.
City of Orono	City Hall, 2750 Kelley Parkway, Orono, MN 55356.
City of Plymouth	City Hall, 3400 Plymouth Boulevard, Plymouth, MN 55447.
City of Richfield	City Hall, 6700 Portland Avenue, Richfield, MN 55423.
City of Rockford	City Hall, 6031 Main Street, Rockford, MN 55373.
City of Rogers	City Hall, 22350 South Diamond Lake Road, Rogers, MN 55374.
City of St. Bonifacius	City Hall, 8535 Kennedy Memorial Drive, St. Bonifacius, MN 55375.
City of St. Louis Park	City Hall, Community Development, 5005 Minnetonka Boulevard, St. Louis Park, MN 55416.
City of Wayzata	City Hall, 600 Rice Street East, Wayzata, MN 55391.
Somerset County, New Jersey (All Jurisdictions) Docket No.: FEMA–B–1532	
Borough of Manville	Municipal Complex, 325 North Main Street, Manville, NJ 08835.
Borough of Millstone	Millstone Borough Hall, 1353 Main Street, Hillsborough, NJ 08844.
Borough of Rocky Hill	Municipal Building, 15 Montgomery Avenue, Rocky Hill, NJ 08553.
Township of Franklin	Township of Franklin Engineering Department, 475 Demott Lane, Somerset, NJ 08873.
Township of Hillsborough	Municipal Complex, Engineering Department, 379 South Branch Road, Hillsborough, NJ 08844.
Township of Montgomery	Township of Montgomery Municipal Offices, 2261 Route 206, Belle Mead, NJ 08502.

[FR Doc. 2016–17739 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of November 18, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Ulster County, New York (All Jurisdictions) Docket No.: FEMA-B-1404	
Town of Denning	Denning Town Clerk's Office, 1567 Denning Road, Claryville, NY 12725.
Town of Hardenburgh	Hardenburgh Town Hall, 51 Rider Hollow Road, Arkville, NY 12406.
Town of Hurley	Town Hall, 10 Wamsley Place, Hurley, NY 12443.
Town of Marbletown	Marbletown Town Hall, 1915 Lucas Avenue, Cottekill, NY 12419.
Town of Olive	Olive Town Hall, 45 Watson Hollow Road, West Shokan, NY 12494.
Town of Shandaken	Town Hall, 7209 Route 28, Shandaken, NY 12480.
Town of Wawarsing	Wawarsing Town Assessor's Office and Building Department, 108 Canal Street, Ellenville, NY 12428.
Town of Woodstock	Town Clerk's Office, 45 Comeau Drive, Woodstock, NY 12498.

[FR Doc. 2016–17727 Filed 7–26–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

30-Day Notice and Request for Comments

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection requests (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1620–0002. This information collection was previously published in the **Federal Register** on May 19, 2016 at 81 FR 31652, allowing for OMB review and a 60-day public comment period. No comments were received. This notice allows for an additional 30 days for public comment.

DATES: Comments are encouraged and will be accepted until August 26, 2016.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for United States Secret Service, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov;* or faxed to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Security Management Division, Attn: ATSAIC Jonathan Bryant, Communications Center (SMD), 345 Murray Lane SW., Building T5, Washington, DC 20223. Telephone number: 202–406–6658.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires each Federal agency to provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The notice for this proposed information collection contains the following: (1) The name of the component of the U.S. Department of Homeland Security; (2) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (3) OMB Control Number, if applicable; (4) Title; (5) Summary of the collection; (6) Description of the need for, and proposed use of, the information; (7) Respondents and frequency of collection; and (8) Reporting and/or recordkeeping burden.

The Department of Homeland Security invites public comment.

The Department of Homeland Security is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, including whether the information will have practical utility; (2) Is the estimate of burden for this information collection accurate; (3) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (4) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology. All comments will become a matter of public record. In this document the U.S. Secret Service is soliciting comments concerning the following information collection:

Title: U.S. Secret Service Facility Access Request.

OMB Number: 1620–0002.

Form Number: SSF 3237.

Abstract: Respondents are primarily Secret Service contractor personnel or non-Secret Service Government employees on official business that require access to Secret Service controlled facilities in performance of official duties. These individuals, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service-controlled facilities. Responses to questions on the SSF 3237 yield information necessary for the adjudication of eligibility for facility access.

Agency: Department of Homeland Security, United States Secret Service.

Frequency: Occasionally.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households/Business.

Estimated Number of Respondents: 5000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1250 hours.

Estimated Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Authority: This process is conduced in accordance with 5 CFR 1320.10.

Dated: July 19, 2016.

Nancy House,

Acting Deputy Chief—Policy, Management and Organization Division, U.S. Secret Service, U.S. Department of Homeland Security.

[FR Doc. 2016–17748 Filed 7–26–16; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5927–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal

Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2016, is 1 3/4 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2016, is 2 1/2 percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2016, is 2½percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 2½percent for the 6-month period beginning July 1, 2016. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2016.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10 ¼	Jan. 1, 1986	July 1, 1986.
8 ¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2016, is 1 3/4 percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 15, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–17783 Filed 7–26–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5915–C–05]

60 Day Notice of Proposed Information Collection for License for the Use of Personally Identifiable Information Protected Under the Privacy Act of 1974

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Correction; notice.

SUMMARY: This notice replaces the document HUD published on July 11, 2016 at 81 FR 44891. The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 26, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: License for the Use of Personally Identifiable Information Protected Under the Privacy Act of 1974.

Description of the need for information and proposed use: The United States Department of Housing and Urban Department (HUD) has collected and maintains personally identifiable information, the confidentiality of which is protected by the Privacy Act of 1974 (5 U.S.C. 522A). HUD wishes to make the data available for statistical, research, or evaluation purposes for qualified organizations capable of research and analysis consistent with the statistical, research, or evaluation purposes for which the data were provided or are maintained, but only if the data are used and protected in accordance with the terms and conditions stated in this license (License). Upon receipt of such assurance of qualification and capability, it is hereby agreed between HUD and (Name of the organization to be licensed) that the license be granted.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Instrument	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	12	12	1	12
Quarterly Reports	0	0	0	0
Annual Reports	40	40	1	40
Final Reports	6	6	.25	1.5
Recordkeeping	12	36	0.5	18
Total	12	94	2.75	71.5

Status of the proposed information collection: Pending OMB approval.

Authority: Title 12, U.S.C., section 1701z–1 *et seq.*

Dated: July 20, 2016.

Katherine M. O'Regan,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2016–17778 Filed 7–26–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2015–0169; 4500030113]

Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a final methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the Endangered Species Act. This methodology is intended to allow us to address outstanding workload strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our upcoming workload.

DATES: The Service plans to put this methodology in place immediately in order to prioritize upcoming status reviews and develop our National Listing Workplan.

ADDRESSES: You may review the reference materials and public input used in the creation of this final methodology at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2015–0169. Some of these materials are also available for public inspection at U.S. Fish and Wildlife Service, Division of Conservation and Classification, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703/358–2171; facsimile 703/358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the Endangered Species Act, as amended (Act; 16 U.S.C. 1531 *et seq.*), the public can petition the Service to list, delist, or reclassify a species as an endangered species or a threatened species. The Act sets forth specific timeframes in which to complete initial findings on petitions: The Service has, to the maximum extent practicable, 90 days from receiving a petition to make a finding on whether the petition presents substantial information indicating that the petitioned action may be warranted; and subsequently 12 months from receiving a petition for which the Service has made a positive initial finding to make a finding on whether the petitioned action is warranted, not warranted, or warranted but precluded. However, these statutory deadlines have often proven not to be achievable given the workload in the listing program and the available resources.

As a result of petitions to list a large number of species under the Act received between 2007 and 2012, our workload requires us to complete more than 500 status reviews and accompanying 12-month findings on those petitions. At the same time, our resources to complete these findings are limited. Beginning in 2010, we took steps to streamline our listing program, and we continue to find efficiencies in our procedures for evaluating petitions and conducting listing actions. However, these efforts are not sufficient to keep up with the demands of our workload. This methodology is intended to allow us to address the outstanding workload of status reviews and accompanying 12-month findings strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our workload into the future.

To balance and manage this existing and anticipated future status review and accompanying 12-month finding workload in the most efficient manner, we have developed this methodology to help us fulfill our mission and to use our resources in a consistent and predictable manner. We intend to achieve this goal by working on the highest-priority status reviews and accompanying 12-month petition findings (actions) first. The methodology consists of five prioritization categories. For each action, we will determine where (into which category) each action belongs, and we will use that information to establish the order in which we plan to complete status reviews and accompanying 12-month findings on petitions to list species under the Act. This prioritization of status reviews and accompanying 12-month petition findings will inform a multi-year National Listing Workplan for completing all types of actions in the listing program workload—including not only status reviews and accompanying 12-month findings, but also status reviews initiated by the Service, proposed and final listing determinations, and proposed and final critical habitat designations. We will share the National Listing Workplan with other Federal agencies, State fish and wildlife agencies, Native American Tribes, and other stakeholders and the public at large through our Web site (*http://www.fws.gov/endangered/*) and periodically update it as circumstances warrant. This methodology for prioritizing status reviews and accompanying 12-month petition findings to list species does not apply to actions to uplist a species from a threatened species to an endangered species, to downlist a species from an endangered species to a threatened species, or to delist a species. Further, this methodology does not replace our 1983 Endangered and Threatened Species Listing and Recovery Priority Guidelines (September 21, 1983; 48 FR 43098), which apply to species that have already been determined to warrant a listing proposal; rather, it complements it and can be used in conjunction with it. As with the 1983 guidelines, this methodology must be viewed as a guide and should not be looked upon as an inflexible framework for determining resource allocations (see 48 FR 43098). It is not intended to be binding. The methodology identified in this document that is to be used in prioritizing actions incorporates numerous objectives—including acting on the species that are most in need of, and that would most benefit from, listing under the Act first, and increasing the efficiency of the listing program.

We plan to evaluate unresolved status reviews and accompanying 12-month findings for upcoming listing actions and prioritize them using the prioritization categories identified in this methodology to assign each action to one of five priority categories, or "bins," as described below. In prioritizing status reviews and accompanying 12-month findings, we will consider information from the 90-day finding, any petitions, and any other information in our files. We recognize that we may not always have in our files the information necessary to assign an action to the correct bin, so we plan to work also with State fish and wildlife agencies and Native American Tribes who have management responsibility for these species or relevant scientific data, as well as with any other appropriate conservation partners who have relevant scientific data, to obtain the information necessary to allow us to accurately categorize specific actions.

Summary of Changes From the Draft Notice

Below is a summary of changes from the draft methodology as a result of public review and comment.

1. We added to the description of Bin 1 to clarify our intent to include species for which there is an urgent need for protection under the Act.
2. A clarification of "reasonable timeframe" was added to the description of Bin 3.
3. The word "Opportunities" in the title of Bin 4 was changed to "Efforts" to more closely align with language in our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).
4. We changed "completed in time" to "reasonable timeframe" in the description of Bin 4, clarified the phrase, and added language clarifying our consideration of conservation efforts.
5. We have split the section of the draft methodology titled Additional Considerations into two sections for the final methodology—"Sub-Ranking Considerations" and "Exceptions to Priority Order." We clarified that the sub-ranking considerations are only to be used to move actions for species within bins, not between bins. We also explained the circumstances in which the exceptions to priority order may be used.
6. We made several other minor edits to increase clarity and readability of the methodology.

Priority Bins

Below we describe the categories we have identified for prioritizing status reviews and accompanying 12-month petition findings and the information that we will consider when placing specific actions into the appropriate priority bin. An action need not meet every facet of a particular bin in order to be placed in that bin. If an action meets the conditions for more than one bin, the Service will seek to prioritize that action by considering any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of this methodology—including protecting the species that are most in need of, and that would benefit most from, listing under the Act first, and increasing the efficiency of the listing program. If an action meets the definition for Bin 1 (see descriptions of bins, below) and one or more of the other bins, we will place the action in Bin 1 to address the urgency and degree of imperilment associated with that bin.

The sub-ranking considerations that follow the descriptions of the bins will be used to determine the relative timing of actions within bins, not to move actions between bins. Additionally, we identify two exceptions to the binning methodology that may, in certain circumstances, result in actions being completed out of priority order.

(1) Highest Priority—Critically Imperiled

Highest priority will be given to a species experiencing severe threat levels across a majority of its range, resulting in severe population-level impacts. Species that are critically imperiled, meaning they appear to be in danger of extinction now, and need immediate listing action in order to prevent extinction, will be given highest priority. Actions placed in this bin include actions for which we have strong information indicating an urgent need for protection of species under the Act as well as emergency listings. In section 4(b)(7) of the Act, the Secretary is granted discretion to issue a regulation that takes effect immediately upon publication in the **Federal Register**. Such an emergency regulation is in effect for a period of 240 days, during which time the Service follows routine rulemaking procedures to list a species as an endangered or threatened species. Given this statutory background, information indicating imminence of threats is a key factor for placement in this bin.

(2) Strong Data Already Available on Status

Actions for which we currently have strong information concerning the species' status will receive next highest priority. We acknowledge that the Act requires that we base our decisions on the best available information at the time we make a determination, and we will continue to adhere to that requirement. Our experience implementing the Act has shown us that high-quality scientific information leads to stronger, more defensible decisions that have increased longevity. Therefore, we will generally place actions for which we have particularly strong scientific data supporting a clear decision on a species' status—either a decision that the species likely warrants listing or likely does not warrant listing—at a higher priority than actions placed in Bins 3, 4, and 5, discussed below.

(3) New Science Underway To Inform Key Uncertainties

As stated previously, higher-quality scientific information leads to better decision-making, which focuses our resources on providing the protections of the Act to species most in need. Scientific uncertainty regarding information that could affect a species' status is often encountered in listing decisions. With the new, emerging information, a more-informed decision could be made (*e.g.,* a species' status could be determined fairly readily through surveys or other research). For circumstances when that uncertainty can be resolved within a reasonable timeframe because emerging science (*e.g.,* taxonomy, genetics, threats) is underway to answer key questions that may influence the listing determination, those actions will be prioritized for completion next after those with existing strong information bases. The new information should be made available to us within a timeframe that is reasonable, considering what information is already known about threats, status, and trends for the species and how pivotal the new study would be to inform our status determination.

This bin is appropriate when the emerging science or study is already underway, or a report is expected soon, or the data exist, but they need to be compiled and analyzed. Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1 and 2 for completion first. An action for which ongoing research is not expected to produce results in the near future would not be placed in this bin. We intend to move forward with decision-making after the research results become available.

(4) Conservation Efforts in Development or Underway

Where efforts to conserve species are organized, underway, and likely to address the threats to the species, we will consider these actions as our fourth highest priority. Conservation efforts should be at a scale that is relevant to the conservation of the species and likely to be able to influence the outcome of a listing determination. Placing an action in this bin allows the Service to focus its resources on other species whose status is unlikely to change, while conservation efforts for this species get underway, and obtain enrollment or commitments from landowners or other entities, as needed, so that those efforts can have an impact on the status of the species in time to be considered in the status review. If conservation efforts, although laudable, would not be able to address the major threats to a species, the action would not be appropriate for placement in Bin 4. Consistent with our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), we consider conservation efforts to be specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. In order for actions to be appropriately placed in this bin, conservation efforts should be in place now or within a reasonable timeframe, considering what information is already known about threats, status, and trends for the species and how pivotal the conservation efforts would be to inform our status determination. When conducting the status review and accompanying 12-month finding, we will consider conservation efforts not yet implemented or not yet shown to be effective according to PECE, as appropriate. Conservation efforts should aim to be either implemented or effective by the time of the listing determination or meet the PECE standard (*i.e.,* demonstrate a high certainty of implementation and effectiveness). Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1, 2, and 3 for completion first.

(5) Limited Data Currently Available

Actions for a species where limited information is available regarding its threats or status will be given fifth highest priority. If we do not have much information about a species without conducting research or further analysis, the action would be suitably placed in this bin. Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1, 2, 3, and 4 for completion first.

According to the standard under the Act, we need to make listing decisions based on the best available scientific and commercial data. Because the best available data for species in this bin may be very limited even if the Service conducts further research, we will prioritize work on species for which we have more and better data already available.

Sub-Ranking Considerations

The three considerations set forth below will only be used to determine the relative timing of species within their respective bins (*i.e.,* as tie-breakers within a bin), and will not be used to move species between bins.

a. The level of complexity surrounding the status review and accompanying 12-month finding, such as the degree of controversy, biological complexity, or whether the status review and accompanying 12-month finding covers multiple species or spans multiple geographic regions of the Service.

b. The extent to which the protections of the Act would be able to improve conditions for that species and its habitat or to provide benefits to many other species. For example, a species primarily under threat due to sea-level rise from the effects of climate change is unlikely to have its condition much improved by the protections of the Act. By contrast, a species primarily under threat due to habitat destruction or fragmentation from a specific human activity would more directly benefit from the protections of the Act. Although this consideration may be used to determine the relative timing of making determinations for different species within a particular bin, the Service does not consider this information in making status determinations of whether or not species warrant listing.

c. Whether the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas.

Exceptions to Priority Order

In some specific instances, we may complete work on actions outside of priority order (*e.g.,* we may work on a Bin 3 action ahead of a Bin 2 action). Where appropriate, the following exceptions may be used in scheduling the timing of actions.

a. Where there are opportunities to maximize efficiency by batching multiple species for the purpose of status reviews, petition findings, or listing determinations. For example, actions could be batched by taxon, by species with like threats, by similar geographic location, or other similar circumstances. Batching may result in lower-priority actions that are tied to higher-priority actions being completed earlier than they would otherwise.

b. Where there are any special circumstances whereby an action should be bumped up (or down) in scheduling. One limitation that might result in divergence from priority order is when the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas.

Summary of Comments and Recommendations

On January 15, 2016, we published a document in the **Federal Register** (81 FR 2229) that requested written comments and information from the public on the draft methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing under the Act. The comment period was open for 30 days, ending February 16, 2016. Comments we received are grouped into general categories below specifically relating to the draft methodology.

Comments Regarding National Listing Workplan

Comment (1): We received many comments on the National Listing Workplan asking for details regarding the frequency of updates, methodology for development, public or stakeholder input, types of actions to be included, consistency with prior Service policies, and the practical implementation of such a plan.

Our Response: Comments on the National Listing Workplan are outside the scope of this methodology and the open public comment period. This methodology is one tool that will be used to develop and maintain the National Listing Workplan. Other factors that will be considered in development of the National Listing Workplan include annual available funding, staffing resources, non-discretionary requirements such as court orders and settlement-agreement requirements, and the listing priority numbers of existing candidate species. This final methodology does not set forth the particulars of implementation or periodic revision of the National Listing Workplan; those details will be made available when the workplan is shared publicly later this summer through posting on our Web site and public outreach.

Comments Regarding Bin 1

Comment (2): Several commenters requested clarifications or definitions of words or phrases in Bin 1, specifically the phrases "critically imperiled," "severe threat," "majority of its range," and "severe population-level impacts." Commenters suggested adding the phrase "based on the best available science" to the definition of Bin 1. Another commenter suggested adding examples of how the Service would determine that a species is experiencing severe threat levels across a majority of its range, resulting in severe population-level impacts.

Our Response: We have provided more clarity regarding the meaning of "critically imperiled" in the description of Bin 1. We consider that phrase to mean that a species appears to be in danger of extinction now (the species is currently on the brink of extinction in the wild), such that immediate action to list the species under the Act is necessary to prevent extinction. See Service 2008 for additional discussion of how the Service views categories of endangered species. In section 4(b)(7) of the Act, the Secretary is granted discretion to issue a regulation that takes effect immediately upon publication in the **Federal Register**. This emergency regulation is in effect for a period of 240 days, during which time the Service follows routine rulemaking procedures to list a species as endangered or threatened. Given this statutory background, information indicating imminence of threats is a key factor for placement in this bin. We have not added the phrase "based on the best available science" to the definition of Bin 1, because the requirement to base decisions on the best available science applies to the status determination, not to the binning or prioritization process. While we readily acknowledge that, at the time of bin placement, there will not yet be a determination of status, we will consider information from our files, the 90-day finding, any petitions, and from our partners (see Background section, above) indicating that a particular species may be experiencing severe, rangewide, and imminent threats in order to place a species in Bin 1.

However, we decline to define the other phrases highlighted by the commenters because the particular facts of what constitutes a "severe threat," what the "majority of its range" represents, and what "severe population-level impacts" means are highly specific to the circumstances of individual species.

Comment (3): One commenter noted that Bin 1 appears to suppose strong data are available to define "critically imperiled" and "severe threats," meaning there is significant overlap between Bins 1 and 2. The commenter stated that the final methodology needs to make clear the distinction between placing species in Bin 1 or Bin 2.

Our Response: We have added language to the final methodology to further distinguish between Bin 1 and Bin 2. Our intent is that an action will be categorized into only one bin based on the information available at the time of binning. Our intent is to prioritize for early action the species that meet the definition of Bin 1, regardless of whether they meet the definition of other bins.

Comments Regarding Bin 2

Comment (4): One commenter requested that the Service clarify that assessing the strength of data solely relates to the availability of information, and will not prejudice the evaluation of whether listing is warranted or not warranted, which is based on the best available scientific and commercial information.

Our Response: This methodology does not dispose of the Service's obligation to use the best available scientific and commercial data when assessing whether listing a species under the Act is warranted or not warranted. The intent of Bin 2 is not to evaluate how much available information there is about a particular species, but rather how strongly the data point in a direction relative to whether listing may or may not be warranted. In this final methodology, we clarify the description for Bin 2 as the following:

> . . . we will generally place an action for which we have particularly strong scientific data supporting a clear decision on status—either a decision that the species likely warrants listing or likely does not warrant listing—at a higher priority than species in Bins 3, 4, and 5 . . .

Combined with the intent of this methodology for prioritizing status reviews and accompanying 12-month petition findings, we view this language as clear.

Comment (5): Several commenters questioned why the Service would prioritize work on 12-month findings that have strong information indicating listing is likely not warranted ahead of those where listing is likely warranted. In this same theme, another commenter stated that species that are imperiled should be prioritized over those that are relatively secure.

Our Response: To the extent possible, the Service will equally prioritize actions for species for which we have strong information indicating listing is likely warranted or likely not warranted. Both of these outcomes take advantage of the high quality of the current body of scientific knowledge on the species. In the case where we have strong information for a species indicating that listing is likely warranted, we want to provide the protections of the Act in a timely fashion. In the cases where we have strong information for a species indicating that listing is likely not warranted, we want to provide that regulatory certainty to our conservation partners so that they can focus their conservation resources on species in need. Additionally, by placing species in Bin 2 for which we have strong information indicating listing is likely not warranted, we anticipate being able to quickly and efficiently reduce our overall workload.

Comment (6): One commenter stated that because Bin 2 suggests adequate information is available to make a decision, candidate species in this bin should be either listed or determined to not warrant listing.

Our Response: This prioritization methodology has been developed strictly to prioritize work for species awaiting status reviews and accompanying 12-month findings after completed 90-day findings indicated that the species may warrant listing. Candidate species have already had a 12-month finding completed and have been determined to warrant listing; therefore, they would not be subject to binning using this methodology. Candidate species receive a listing priority number (LPN), which is a prioritization method for candidate species that have been found to warrant listing but are precluded by other actions of higher priority.

Comment (7): One commenter requested clarification of how the Service would categorize actions for species that potentially meet the criteria for more than one bin. In particular, the commenter questioned how the Service would prioritize between an action for a species with strong data available (Bin 2) and an action for a species with significant conservation efforts underway (Bin 4).

Our Response: This final prioritization methodology is designed to place an action into only one bin. In general, if an action meets the conditions for more than one bin, the Service will prioritize that action by considering any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of this methodology—including protecting first the species that are most in need of, and that would benefit most from, listing under the Act, and increasing the efficiency of the listing program. If an action meets the definition for Bin 1 and one or more of the other bins, we will place the action in Bin 1 to address the urgency and degree of imperilment associated with species in that bin. The Service will evaluate on a case-by-case basis other instances in which an action meets the criteria for more than one bin. In the particular instance highlighted by the commenter, where there is strong data indicating that listing a particular species is likely warranted and conservation measures likely to address the threats to the species are underway, the Service could choose to add the species to Bin 4. In this example, placement in Bin 4 would allow the Service to concentrate its resources on status reviews and accompanying 12-month findings for higher-priority species for which the conservation status is unlikely to change in the immediate future. Meanwhile, the conservation efforts for the species at issue might ameliorate threats such that listing would not be warranted by the time the Service completed higher-priority actions. This approach would also appropriately prioritize for earlier action species for which no conservation efforts are underway.

Comments Regarding Bin 3

Comment (8): One commenter requested additional clarity regarding the types of data, uncertainties, or ongoing studies that are needed to appropriately place an action in Bin 3. The commenter suggested that actions only be placed in Bin 3 if the uncertainty relates to whether the species is imperiled or not and the new information may shift the outcome of the 12-month finding.

Our Response: Scientific uncertainty regarding information that could affect a species' status is often encountered in listing decisions. If the research underway would have no bearing on a status determination, we would not place the species in Bin 3. However, many types of information, in addition to degree of imperilment, inform the outcome of a status determination. For example, ongoing investigations into questions regarding taxonomy and genetics inform whether the entity being evaluated qualifies as a listable entity or not. Therefore, a variety of types of research efforts underway may qualify an action for placement in Bin 3.

Comment (9): Several commenters asked for the Service to define "reasonable timeframe" and also noted that the Act does not allow for an exception to the 12-month timeframe to complete a status review and 12-month finding. One commenter encouraged the Service to make timely decisions.

Our Response: In our draft methodology (81 FR 2229; January 15, 2016), and in this final methodology, we readily acknowledge the requirements of the Act to make a status review and accompanying 12-month petition finding within 12 months of receiving a petition. However, it is not possible, given our budget limitations established by Congress and the immense backlog of 12-month findings, to meet our statutory obligations under the Act for 12-month findings. Regarding the request to define "reasonable timeframe," we cannot specify a particular value of months or years. Rather, we have added language to the Bin 3 description to provide clarification that we intend "reasonable timeframe" to mean that the new information should be made available to us within a timeframe that is reasonable, considering what information is already known about threats, status, and trends for the species and how pivotal the new study would be to inform our status determination. This will allow for the necessary flexibility to assess case-specific facts and implement this prioritization methodology and thereby inform the National Listing Workplan. In this way, we envision being able to make decisions in a timely manner while providing predictability for our conservation partners.

Comments Regarding Bin 4

Comment (10): Several commenters requested the Service clarify that the types of conservation measures (permanent versus temporary; enforceable versus unenforceable) matter when considering binning species.

Our Response: Bin 4 would include species for which conservation efforts are organized, underway, and likely to address the threats to the species. These efforts could include a variety of different types of conservation efforts, and it is difficult to anticipate all the fact patterns that could arise. By using the phrase "likely to address the threats to the species," we mean that they are at a scale that is relevant to the conservation of the species and that they are likely to be able to influence the outcome of a listing determination. If conservation efforts, although laudable, would not be able to address the major threats to a species, the species would not be appropriate for placement in Bin 4. Likewise, conservation efforts should aim to be implemented and effective by the time of the listing determination or to meet the PECE standard if either or both of those criteria have not been achieved (*i.e.,* demonstrate a high certainty of implementation and/or effectiveness).

Comment (11): Several commenters suggested the consideration of conservation measures (Bin 4) should be a higher priority than "new science underway" (Bin 3), while one other commenter suggested Bin 4 be given the lowest priority to allow time for conservation measures to become effective and obviate the need to list species.

Our Response: The Service chooses to maintain the order of bins as described in the draft and this final methodology. We have determined that it is more logical to keep Bin 5 as the lowest priority, rather than Bin 4. Placing the current Bin 5 ahead of the current Bin 4 would mean allocating more resources to data-deficient species rather than to species with higher-quality information. The order of Bin 3 also may have the effect of allowing time for needed scientific investigations to be completed and available for consideration in any 12-month finding. Lastly, we anticipate that Bin 5 will be used less in the future with more-consistent application of the 90-day finding standard; for example, if the proposed revised petition regulations are finalized as noticed to the public on April 16, 2016 (81 FR 23448), species with little information would be dismissed at the 90-day stage rather than considered for a full status review. The current order of the bins focuses the Service's resources first on those species whose status is unlikely to change, with the effect of allowing time for conservation measures to mature and become effective, potentially obviating the need to list species.

Comment (12): One commenter stated that Bin 4 mixes two separate considerations under the Act, listing and recovery. The commenter stated that a full determination of whether ongoing conservation efforts are sufficient to address threats can only be made if a recovery plan has been developed for a species.

Our Response: The Service has a long history of considering whether conservation efforts effectively ameliorate threats to species when making listing determinations under the Act. In particular, section 4(b)(1)(A) of the Act specifies that we consider conservation efforts being made by any State or political subdivision of a State when conducting a review of the status of a particular species. Our status assessments always consider conservation efforts that have been implemented and effective when analyzing the overall status of a species. We apply PECE when we wish to rely on conservation efforts in our status assessments that have not yet been implemented or been shown to be effective. A recent example of the application of PECE is the not-warranted finding for the least chub (79 FR 51042; August 26, 2014). A recovery plan does not need to be in place before we can accurately assess whether conservation efforts are likely to affect a listing determination.

Comment (13): Several commenters questioned the meaning of the phrase, "completed in time for consideration in the status review" and asked for a definition of this phrase.

Our Response: We have changed the phrase "completed in time" to "reasonable timeframe" in this final methodology. We added language to the description of Bin 4 stating that conservation efforts should be in place now or within a reasonable timeframe, considering what information is already known about threats, status, and trends for the species and how pivotal the conservation efforts would be to inform our status determination.

Comment (14): A commenter questioned whether conservation efforts need be completed or participants only be enrolled. If the Service intends only the latter, the commenter recommends actions should be evaluated according to PECE.

Our Response: When we refer to conservation efforts, we consider those to be specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. We have added language to the description of Bin 4 to clarify this point. Our intention is for this methodology to be an assessment tool to quickly and strategically prioritize our workload. Before we can rely on conservation efforts that have not been implemented or shown to be effective as a basis for not listing a species that would otherwise be warranted, we first must determine that the efforts have a high certainty of effectiveness and implementation in accordance with PECE.

Comments Regarding Bin 5

Comment (15): One commenter suggested reevaluating species in Bin 5 on a regular basis to determine whether they can be moved to another bin.

Our Response: If we receive additional information on a species for which we formerly had little information, we can revisit the order in which we plan to address it. We may take into consideration such factors as: Whether moving an action for a species into another bin would disrupt other actions in that bin; whether resources would be available to address the action; whether conservation partners would be able to take action on that particular species; or other relevant factors. However, because the National Listing Workplan is designed to provide predictability to our stakeholders on what actions we are taking and when, we want to avoid delaying already scheduled actions to the extent possible. Therefore, we might not be able to change the timeframe associated with that action unless we determined that it qualified for Bin 1 or we have the ability to take on additional work with our existing resources.

Comment (16): Many commenters disagreed with the concept of Bin 5 altogether and suggested species in this bin should not be subjected to status reviews if almost no data exist regarding their status. Other commenters were concerned that species in this bin would be "parked" here indefinitely. A few commenters stressed that the relevant inquiry for a 12-month finding is not whether there is a lack of data, but rather an assessment of the best available scientific and commercial data regarding a species. Commenters reminded the Service that there is a significant distinction between not knowing enough about a species and a circumstance where the best available information does not indicate listing is warranted.

Our Response: Under the Act, once we make a positive 90-day finding, we are required to conduct a status review of the species and issue a 12-month finding. If the best available scientific and commercial information is extremely limited, and nothing in that information points to operative threats to the species or its habitat, the Service is likely to make a not-warranted 12-month finding (or, in the future, if the Service is faced with such a petition, there is a good chance it would find at the 90-day finding stage that the petition does not present substantial information). We also agree that the basis for a not-warranted finding must be the best available scientific and commercial information; the concept of not knowing enough about a species is not a basis for a not-warranted finding. Many of the species that are currently appropriate for placement in Bin 5 are species from one or more multi-species petitions we received between 2007 and 2012. Faced with fulfilling our obligation to make 90-day findings for hundreds of species in a short period of time, we made positive 90-day findings for some species with little more than general habitat or occurrence information because we were more concerned with false negatives (Type 2 errors) rather than false positives (Type 1 errors). Those species now make up the majority of actions in Bin 5. Despite this, placing a species in Bin 5 does not put off working on the listing action, it simply prioritizes species in Bins 1, 2, 3, and 4 for completion first. We intend to make findings on species in Bin 5 as our resources allow. Once we have processed the species currently appropriate for placement in Bin 5, we anticipate that the use of this bin will be infrequent in the future as we strive for greater consistency in our application of the 90-day standard.

Comment (17): A commenter stated specific criteria should be developed to differentiate between strong versus limited data. Another commenter suggested rephrasing "we know almost nothing about its threats or status."

Our Response: It has been our experience that data regarding a species' status are a relative measure and, thus, vary based on the circumstances for a particular species, so we have not further defined these terms. Furthermore, providing precise definitions may unintentionally limit our ability to bin actions appropriately.

Regarding the request to rephrase "we know almost nothing about its threats or status," we have rephrased the description of Bin 5 in this final methodology to "limited information is available regarding its threats or status."

Comments Regarding Additional Considerations

Comment (18): Many commenters questioned how the additional considerations would be applied to move species between bins.

Our Response: We have split the section of the draft methodology titled Additional Considerations into two sections for the final methodology. In the draft methodology, the first two bullets under Additional Considerations related to how we would consider prioritizing species within bins. In the final methodology, above, this information is now titled Sub-Ranking Considerations. We have clarified the language in this final methodology to reduce confusion and highlight that the three sub-ranking considerations will not be used to move species between bins, but rather will be used as tie-breakers to sub-rank species within a particular bin.

The third and fourth bullets under Additional Considerations in the draft methodology do not relate to ranking within bins, but rather are important considerations regarding exceptions to the priority order in scheduling actions in the National Listing Workplan. In the final methodology, above, this information is now titled Exceptions to Priority Order.

Comment (19): Several commenters suggested the examples used in the second bullet under the draft methodology's Additional Considerations section were biased against grazing and in suggesting that the Act cannot ameliorate threats related to climate change. Another commenter suggested that using the purported ability, or lack thereof, of the Act to improve a species' condition was a cynical and self-fulfilling prophecy.

Our Response: In our 40 years' experience implementing the Act, we have learned that the protections provided for under the Act better address some types of threats than others. For example, species that have been threatened by excessive human-caused mortality (*e.g.,* bald eagle, peregrine falcon, gray wolf, and grizzly bear) have seen relatively quick increases once the sources of mortality were managed. The Act's provisions are less effective against other threats, such as sea-level rise or catastrophic events (*e.g.,* tsunamis, drought). The sub-ranking considerations will be used to rank species within their particular bins. The consideration of whether the Act can improve conditions for a species' status is a useful tool to assist in the prioritization of listing species that need help first, and where, within a bin, our resources would be best spent first.

Comment (20): Several commenters disagreed with our inclusion of the "level of complexity" and "level of controversy" as additional sub-ranking considerations, stating that the inclusion of such criteria is contrary to the obligation of the Service to make decisions based on the best available scientific and commercial data. Commenters were concerned that complexity and controversy could be used to delay decisions on "politically sensitive" species.

Our Response: We will always use the best scientific and commercial data available when evaluating species for listing under the Act. However, we underscore that this prioritization methodology is not to be used to make decisions about whether species should be listed under the Act. Rather, this methodology is a system to manage our outstanding workload. The consideration of level of complexity and level of controversy are important points for managing our workload, in that they can inform the breadth and depth of a particular action. Knowing ahead of time the expected complexity and controversy of an action will inform our allocation of resources to address that particular action.

Other Comments

Comment (21): One commenter suggested using State wildlife action plans as the principle source of information for binning species.

Our Response: We will use appropriate information sources to assign species to bins, including information from State wildlife action plans (SWAPs). We acknowledge that the information in SWAPs is a tremendous resource. However, not all information needed to accurately bin species would necessarily be contained in SWAPs. We intend to use information from our files and other available resources to bin actions appropriately.

Comment (22): A commenter stated that questions regarding "what is a species?" must be resolved before listing and that actions for species that have questionable taxonomy or questions regarding "listability" under the Act should be placed in lower priority bins.

Our Response: As stated in the draft and this final methodology, we will place species in Bin 3 if there is some uncertainty about taxonomy that can be addressed with new science that is underway. Species without such uncertainties and without emerging science underway to address uncertainties may be placed in any other bin deemed appropriate depending on the particular facts of the situation.

Comment (23): Some commenters expressed support of our intentions to work with States, Tribes, and other appropriate conservation partners, while other commenters encouraged broadening the scope to include other parties such as industry and local governments.

Our Response: We think it most appropriate to include the mention of conservation partners with management authority for species because it has been our experience that those entities have the most specific and pertinent information for the binning methodology. However, we accept and welcome information from interested parties at any time. We will consider information received from all parties while assessing the most appropriate bin for a species.

Comment (24): One commenter stated that this methodology cannot become an excuse for not making a determination based on inadequate data.

Our Response: This methodology is a prioritization process and is not a substitute for our independent obligations under the Act for determining whether species meet the definitions of "endangered species" or "threatened species." It is not the Service's intent to use the methodology as an excuse for not making determinations based on inadequate data. Rather, we will continue to follow the requirements of the Act, including making determinations based on the best available scientific and commercial data at the time we make the decision.

Comment (25): A commenter stated that the Service should be careful in using the strength-of-data criterion so that it does not become the basis for fast-tracking listing while delaying not-warranted determinations.

Our Response: This binning methodology is intended to provide clarity for the public and stakeholders, as well as Service staff, about how we will prioritize our workload. As described in Bin 2, strength of data applies to situations where listing is likely warranted and where listing is likely not warranted. In both situations, strong data may lead to such species being prioritized ahead of those whose situations are less certain (Bins 3, 4, and 5). Therefore, we do not view the strength of data to be a fast track for listings at the expense of not-warranted determinations.

Comment (26): Several commenters noted that this methodology appeared to endorse a departure from statutory timeframes, and those commenters do not agree with this departure.

Our Response: Our intent for this methodology is to provide a means by which we are able to process our substantial outstanding workload with a transparent prioritization system. Our ability to comply with statutory timeframes depends directly on the funding allocated by Congress to do so. This amount has been capped at $1.5 million for the last several years. This final prioritization methodology does not modify our statutory obligations under the Act. While it is true that the Service has been unable to address the hundreds of overdue 12-month findings, resource limitations leave us with no conceivable scenario where the Service would be able to address them in their respective statutory timeframes.

Comment (27): A commenter suggested the focus of the methodology should be a reliance on existing information to rank species rather than collecting new information.

Our Response: Collection of new information is not needed in order to rank actions using this methodology; actions will be assigned to bins using the information available to the Service in our files, the 90-day finding, any petitions, and that we have received from our partners. The need for additional information to clarify issues related to taxonomy (Bin 3) or waiting for additional information regarding implementation of conservation efforts (Bin 4) is part of this methodology. However, we do not view these two instances as collection of new information that will inform placement in bins.

Comment (28): One commenter recommended adding a Bin 6 for those species where strong evidence indicates listing is not warranted.

Our Response: We believe that the commenter's concern is addressed by Bin 2, which includes those species for which we have strong information indicating that listing is likely not warranted.

Determinations Under Other Authorities

As mentioned above, we intend to use this methodology to prioritize work on status reviews and accompanying 12-month findings and to assist with prioritizing actions. Below we make determinations provided for under several Executive Orders and statutes that may apply where a Federal action is not a binding rule or regulation.

National Environmental Policy Act (NEPA)

We have analyzed this final methodology in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 1–4 and 8).

We have determined that this methodology is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are "of an administrative, financial, legal, technical, or procedural nature." This action does not trigger an extraordinary circumstance, as outlined at 43 CFR 46.215, applicable to the categorical exclusion. Therefore, this methodology does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act of 1995

This final methodology does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This final methodology will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," the Department of the Interior Manual at 512 DM 2, and the Department of Commerce *American Indian and Alaska Native Policy* (March 30, 1995), we have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of issuing this final methodology. Our intent with this final methodology is to provide transparency to Tribes and other stakeholders in the prioritization of our future workload. We will work with Tribes as we implement this final methodology and obtain the information necessary to bin specific actions accurately.

Authors

The primary authors of this final methodology are the staff members of the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–17818 Filed 7–26–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) has submitted to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Tribal Energy Resource Agreements, authorized by OMB Control Number 1076–0167. This information collection expires July 31, 2016.

DATES: Interested persons are invited to submit comments on or before August 26, 2016.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action, Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, telephone: (202) 273–4680; email: *elizabeth.appel@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth K. Appel, (202) 273–4680; email: *elizabeth.appel@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

To assist Indian Tribes in the development of energy resources and further the goal of Indian self-determination, the Secretary of the Interior (Secretary) shall establish and implement an Indian energy resource development program to assist consenting Indian Tribes and Tribal energy resource development organizations in achieving the purpose, as authorized by 25 U.S.C. 3501 *et. seq.* The statute authorizes the Secretary to approve individual Tribal Energy Resource Agreements (TERAs). The intent of these agreements is to promote Tribal oversight and management of energy and mineral resource development on Tribal lands and further the goal of Indian self-determination. A TERA offers a Tribe an alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary.

This information collection conducted under TERA regulations at 25 CFR 224, will allow the Office of

Indian Energy and Economic Development (IEED) to determine the capacity of Tribes to manage the development of energy resources on Tribal lands. Information collection:

- Enables IEED to engage in a consultation process with Tribes that is designed to foster optimal pre-planning of development proposals and speed-up the review and approval process for TERA agreements;
- Provides wide public notice and opportunity for review of TERA agreements by the public, industry, and government agencies;
- Ensures that the public has an avenue for review of the performance of Tribes in implementing a TERA;
- Creates a process for preventing damage to sensitive resources as well as ensuring that the public has fully communicated with the Tribe in the petition process;
- Ensures that a Tribe is fully aware of any attempt by the Department of the Interior to resume management authority over energy resources on Tribal lands; and
- Ensures that the Tribal government fully endorses any relinquishment of a TERA.

The data will be maintained by BIA's IEED Office. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments on Collection of Information

The Assistant Secretary—Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Request for Comments on Burden Reduction

The Assistant Secretary—Indian Affairs also requests your comments on ways to revise and reduce the burden of the governing regulations for TERAs under 25 CFR 224. Currently, the total annual hour burden for this information collection is 10,752 hours with an estimated time per response from 32 to 1,080 hours. Please submit comments on the following topics to the contact listed in the **ADDRESSES** section of this notice: (1) The aspects of this information collection you identify as having the greatest burden, (2) Whether these burdensome aspects are the likely reason for an underutilization of TERAs; (3) Whether these burdensome aspects are required under statute or regulation, and (4) Any opportunities to reduce the burden of information collection, including but not limited to opportunities to reduce burdens associated with the application process by issuing guidance or instructions for prospective applicants.

Please also specify any language within the regulations that you believe should be adjusted in order to reduce the burden associated with this information collection. Additionally, if you believe that an adjustment to statutory language would reduce the burden associated with this information collection, please specifically identify this language.

IV. Data

OMB Control Number: 1076–0167.

Title: Tribal Energy Resource Agreements, 25 CFR 224.

Brief Description of Collection: Submission of this information is required for Federally Recognized Indian Tribes to apply for, implement, reassume, or rescind a TERA that has been entered into in accordance with 25 U.S.C. 3501 *et. seq.*, and 25 CFR 224. This collection also requires the Tribe to notify the public of certain actions and allows a petition from the public to be submitted to the Secretary of the Interior to inform of possible noncompliance with a TERA.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian Tribes and the public.

Number of Respondents: 14.

Number of Responses: 34.

Frequency of Response: On occasion.

Obligation to Respond: Responses are required to obtain or maintain a benefit.

Estimated Time per Response: Varies from 32 hours to 1,080 hours.

Estimated Total Annual Hour Burden: 10,752 hours.

Estimated Total Annual Non-Hour Dollar Cost: $48,200.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–17779 Filed 7–26–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A;14–08807; MO#4500092822; TAS: 16X]

Notice of Realty Action: Competitive Sale of 16 Parcels of Public Land in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer 16 parcels of public land totaling 182.93 acres in the Las Vegas Valley by competitive sale, at not less than the appraised fair market values (FMV). The BLM is proposing to offer the parcels for sale pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The sale will be subject to the applicable provisions of section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM land sale regulations.

DATES: Interested parties may submit written comments regarding the sale until September 12, 2016. The sale by sealed bid and oral public auction will occur on November 30, 2016, at Clark County Government Center, Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada, 89155 at 10 a.m., Pacific Time. The FMV for the parcels will be available 30 days prior to the sale. The BLM will start accepting sealed bids beginning November 16, 2016. Sealed bids must be received by the BLM, Las Vegas Field Office (LVFO) no later than 4:30 p.m. Pacific Time on November 25, 2016.

The BLM will open sealed bids on the day of the sale just prior to the oral bidding.

ADDRESSES: Mail written comments and submit sealed bids to the BLM LVFO, Assistant Field Manager, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez by email: *lrodriguez@blm.gov, or* by telephone: 702–515–5069. General information on previous BLM public land sales can be found at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to offer 16 parcels of public land in the southwest and southeast areas of the Las Vegas Valley. Fourteen of the parcels are located in the southwest part of the valley, south of Beltway 215 and west of Interstate 15 and one parcel is located east of Interstate 15 and south of St. Rose near Las Vegas Boulevard and Roban Avenue. The last parcel is located northeast of Cheyenne Avenue and Hualapai Way.

The subject public lands are legally described as:

Mount Diablo Meridian, Nevada

N–94534, 12.50 acres:

T. 22 S., R. 60 E.,
Sec. 14, SE¼NE¼SW¼SW¼,
W½NE¼SW¼SW¼,
E½NW¼SW¼SW¼.

N–94535, 5.00 acres:

T. 22 S., R. 60 E.,
Sec. 14, W½NW¼SE¼SW¼.

N–94536, 2.50 acres:

T. 22 S., R. 60 E.,
Sec. 14, NW¼SE¼SW¼SW¼.

N–94537, 2.50 acres:

T. 22 S., R. 60 E.,
Sec. 16, NE¼NE¼SE¼SE¼.

N–94538, 10.00 acres:

T. 22 S., R. 60 E.,
Sec. 19, SW¼NW¼SE¼.

N–94539, 25.00 acres:

T. 22 S., R. 60 E.,
Sec. 21, SW¼NW¼NE¼NE¼,
NW¼SW¼NE¼NE¼, NE¼NW¼NE¼,
N½SE¼NW¼NE¼,
SE¼NW¼NW¼NE¼,
NE¼SW¼NW¼NE¼.

N–94540, 2.50 acres:

T. 22 S., R. 60 E.,
Sec. 22, SE¼NE¼SE¼NW¼.

N–94541, 2.50 acres:

T. 22 S., R. 60 E.,
Sec. 22, NE¼SE¼SE¼NW¼.

N–94542, 37.50 acres:

T. 22 S., R. 60 E.,
Sec. 22, NW¼NW¼NE¼NE¼,
N½NE¼NW¼NE¼,
SE¼NE¼NW¼NE¼, S½NW¼NE¼,
S½NW¼NW¼NE¼,
NW¼NW¼NW¼NE¼.

N–94543, 15.00 acres:

T. 22 S., R. 60 E.,
Sec. 22, W½NE¼SW¼NE¼,
N½NW¼SE¼SW¼NE¼,
S½NW¼SW¼NE¼,
N½NE¼SW¼SW¼NE¼,
NW¼SW¼SW¼NE¼.

N–94544, 1.25 acres:

T. 22 S., R. 60 E.,
Sec. 24, E½SE¼NE¼NW¼NE¼.

N–94545, 25.00 acres:

T. 22 S., R. 60 E.,
Sec. 30, NE¼NE¼NE¼,
NE¼SE¼NE¼NE¼,
S½SE¼NE¼NE¼, N½NE¼SE¼NE¼,
SW¼NE¼SE¼NE¼.

N–94549, 2.50 acres:

T. 22 S., R. 61 E.,
Sec. 29, SW¼SW¼SE¼SW¼.

N–94550, 30.00 acres:

T. 22 S., R. 61 E.,
Sec. 30, SE¼SE¼SE¼,
N½SW¼SE¼SE¼,
SW¼NW¼SE¼SE¼,
SW¼SW¼SE¼SE¼,
SE¼NE¼SW¼SE¼,
NE¼SE¼SW¼SE¼,
W½SE¼SW¼SE¼.

N–94551, 3.75 acres:

T. 23 S., R. 61 E.,
Sec. 17, NE¼NE¼NW¼SE¼,
E½NW¼NE¼NW¼SE¼.

N–94552, 5.43 acres:

T. 20 S., R. 60 E.,
Sec. 7, lot 32.

The areas described aggregate 182.93 acres.

A sales matrix is available on the BLM Web site at: *http://www.blm.gov/snplma.* The sales matrix provides information specific to each sale parcel such as legal description, physical location, encumbrances, acreage, and FMV. The FMV for each parcel will be available in the sales matrix as soon as approved by the BLM and no later than 30 days prior to the sale.

This competitive sale is in conformance with the BLM Las Vegas Resource Management Plan and decision LD–1, approved by Record of Decision on October 5, 1998, and complies with Section 203 of FLPMA. The land is not needed for any Federal purpose, and its disposal is in the public interest. The Las Vegas Valley Disposal Boundary Environmental Impact Statement analyzed the sale parcels and Record of Decision on December 23, 2004. A parcel-specific Determination of National Environmental Policy Act Adequacy document numbered DOI–BLM–NV–S010–2016–0056–DNA was prepared in connection with this Notice of Realty Action.

Submit comments on this sale notice to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including any personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will also publish this notice once a week for three consecutive weeks in the *Las Vegas Review-Journal.*

Sale procedures: Registration for oral bidding will begin at 8 a.m. Pacific Time and will end at 10 a.m. Pacific Time at the Clark County Government Center, Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada, 89155, on the day of the sale, November 30, 2016. There will be no prior registration before the sale date. To participate in the competitive sale, all registered bidders must submit a bid guarantee deposit in the amount of $10,000 by certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior-Bureau of Land Management on the day of the sale or submit the bid guarantee deposit along with the sealed bids. The public sale auction will be through sealed and oral bids. Sealed bids will be opened and recorded on the day of the sale to determine the high bids among the qualified bids received. Sealed bids above the FMV will set the starting point for oral bidding on a parcel. Parcels that receive no qualified sealed bids will begin at the established FMV. Bidders who are participating and attending the oral auction on the day of the sale are not required to submit a sealed bid but may choose to do so.

Sealed-bid envelopes must be clearly marked on the lower front left corner with the parcel number and name of the sale, for example: "N–XXXXX, 16-parcel SNPLMA Fall Sale 2016." If multiple sealed bids are submitted, only the envelope that contains the bid guarantee needs to be noted with "bid guarantee." Sealed bids must include an amount not less than 20 percent of the total bid amount and the $10,000 bid guarantee noted above by certified check, postal money order, bank draft, or cashier's check made payable to the "Department of the Interior-Bureau of Land Management." The bid guarantee and bid deposit may be combined into one form of deposit; the bidder must specify the amounts of the bid deposit and the bid guarantee. If multiple sealed bids are submitted, the first sealed bid of the group must include the $10,000 bid guarantee with the same bidder name. The BLM will not accept personal or company checks. The sealed-bid envelope *must* contain the 20 percent bid deposit, bid guarantee, and a completed and signed "Certificate of Eligibility" form stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility and registration forms are available at the BLM LVFO at the address listed in the **ADDRESSES** section and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Pursuant to 43 CFR 2711.3–1(c), if two or more sealed-bid envelopes containing valid bids of the same amount are received, oral bidding will start at the sealed-bid amount. If there are no oral bids on the parcel, the authorized officer will determine the winning bidder. Bids for less than the federally approved FMV will not be qualified. The highest qualifying bid for any parcel will be declared the high bid. The apparent high bidder must submit a deposit of not less than 20 percent of the successful bid by 3 p.m. Pacific Time on the day of the sale in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management." Funds must be delivered no later than 3 p.m. Pacific Time on the day of the sale to the BLM Collection Officers at the Clark County Government Center, Clark County Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada, 89155. Funds will not be accepted at the BLM–LVFO location. The BLM will send the successful bidder(s) a high-bidder letter with detailed information for full payment.

All funds submitted with unsuccessful bids will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the BLM–LVFO or by certified mail. The apparent high bidder may choose to apply the bid guarantee towards the required deposit. Failure to submit the deposit following the close of the sale under 43 CFR 2711.3–1(d) will result in forfeiture of the bid guarantee. If the successful bidder offers to purchase more than one parcel and fails to submit the 20 percent bid deposit resulting in default on any single parcel following the sale, the BLM will retain the $10,000.00 bid guarantee, and may cancel the sale of all the parcels to that bidder. If a high bidder is unable to consummate the transaction for any reason, the BLM may offer the parcel to the second highest bidder. If there are no acceptable bids, a parcel may remain available for sale at a future date in accordance with competitive sale procedures without further legal notice.

Federal law requires that bidders must be: (1) A citizen of the United States 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) A State, State instrumentality, or political subdivision authorized to hold property; or (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada.

Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high-bidder letter will result in cancellation of the sale and forfeiture of the bid deposit. Citizenship documents and Articles of Incorporation (as applicable) must be provided to the BLM–LVFO for each sale. The successful bidder is allowed 180 days from the date of the sale to submit the remainder of the full purchase price.

According to SNPLMA as amended, section 4(c) of Public Law 105–263, lands identified within the Las Vegas Valley Disposal Boundary are withdrawn from location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws until such times as the Secretary terminates the withdrawal or the lands are patented. Any subsequent applications will not be accepted, will not be considered as filed, and will be returned to the applicant.

Terms and Conditions: All minerals for the sale parcels will be reserved to the United States. The patents, when issued, will contain a mineral reservation to the United States for all minerals. To clarify mineral reservations as it relate to mineral materials, such as sand and gravel, we refer interested parties to the regulations at 43 CFR 3601.71(b), which provides that the owner of the surface estate of lands with reserved Federal minerals may "use a minimal amount of mineral materials for . . . personal use" within the boundaries of the surface estate without a sales contract or permit. The regulation provides that all other use, absent statutory or other express authority, requires a sales contract or permit. We also refer interested parties to the explanation of this regulatory language in the preamble to the final rule published in the **Federal Register** on November 23, 2001 (66 FR 58891), which stated that minimal use "would not include large-scale use of mineral materials, even within the boundaries of the surface estate." Further explanation is contained in BLM Instruction Memorandum No. 2014–085 (April 23, 2014), available on BLM's Web site at *http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2014/im_2014-085__unauthorized.html.*

The parcels are subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any right-of-way (ROW) within the sale parcels will have the opportunity to amend the ROW for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. The BLM will notify valid existing ROW holders of record of their ability to convert their compliant ROWs to perpetual ROWs or easement. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The following numbered terms and conditions will appear on the conveyance documents for the sale parcels:

1. All minerals deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;
2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);
3. The parcels are subject to valid existing rights;
4. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans; and
5. An appropriate indemnification clause protecting the United States from claims arising out of the lessees/patentee's use, occupancy, or occupations on the leased/patented lands will be included in the patents issued.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended, notice is hereby given that the lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of a parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of section 120(h) of the CERCLA.

Unless the BLM authorized officer approved other satisfactory arrangements in advance, conveyance of title will be through escrow. Designation of the escrow agent will be through mutual agreement between the BLM and the prospective patentee, and costs of escrow will be borne by the prospective patentee.

The BLM–LVFO must receive the request for escrow instructions prior to 30 days before the prospective patentee has scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM- LVFO 30 days from the date on the high-bidder letter by 4:30 p.m. Pacific Time. There are no exceptions. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM–LVFO.

The remainder of the full bid price for the parcel must be received no later than 4:30 p.m. Pacific Time, within 180 days following the day of the sale. Payment must be submitted in the form of a certified check, postal money order, bank draft, cashier's check, or made available by electronic fund transfer made payable in U.S. dollars to the "Department of the Interior—Bureau of Land Management" to the BLM–LVFO. The BLM will not accept personal or company checks.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of such an exchange is the bidder's responsibility. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), within 30 days the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale if the BLM authorized officer determines consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Upon publication of this Notice and until completion of this sale, the BLM will no longer accept land use applications affecting the parcel identified for sale. The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Information concerning the sale, encumbrances of record, appraisals, reservations, procedures and conditions, CERCLA, and other environmental documents that may appear in the BLM public files for the proposed sale parcels are available for review during business hours, 8 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, at the BLM–LVFO, except during Federal holidays.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government.

It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should make themselves aware of any Federal or State law or regulation that may affect the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Any comments regarding the proposed sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Frederick Marcell,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 2016–17753 Filed 7–26–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000.L19900000.PO0000]

Renewal of Approved Information Collection; OMB Control No. 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue a collection of information that assists the BLM in managing operations authorized by the mining laws, in preventing unnecessary or undue degradation of public lands, and in obtaining financial guarantees for the reclamation of public lands. The Office of Management and Budget (OMB) previously approved this information collection activity, and assigned it control number 1004–0194.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before August 26, 2016.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior, Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: To Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0194" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Adam Merrill, at 202–912–7044. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Merrill. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on February 26, 2016 (81 FR 9880), and the comment period ended April 26, 2016. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0194 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

Title: Surface Management Activities under the General Mining Law (43 CFR subpart 3809).

Forms

- Form 3809–1, Surface Management Surety Bond;
- Form 3809–2, Surface Management Personal Bond;
- Form 3809–4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal;
- Form 3809–4a, Surface Management Personal Bond Rider; and
- Form 3809–5, Notification of Change of Operator and Assumption of Past Liability.

OMB Control Number: 1004–0194.

Abstract: This collection of information enables the BLM to determine whether operators and mining claimants are meeting their responsibility to prevent unnecessary or undue degradation while conducting exploration and mining activities on public lands under the mining laws, including the General Mining Law (30 U.S.C. 22–54). It also assists the BLM in obtaining financial guarantees for the reclamation of public lands. This collection of information is found at 43 CFR subpart 3809 and in the forms listed below.

Frequency of Collection: On occasion.

Description of Respondents: Operators and mining claimants.

Estimated Annual Responses: 1,495.

Estimated Annual Burden Hours: 183,808.

Estimated Annual Non-Hour Costs: $4,780 for notarizing Forms 3809–2 and 3809–4a.

The estimated burdens are itemized in the following table:

Type of response and 43 CFR citation	Number of responses	Hours per response	Total hours (column B × column C)
A	B	C	D
Initial or Extended Plan of Operations (3809.11)	49	320	15,680
Data for EIS (3809.401(c))	5	4,960	24,800
Data for Standard EA (3809.401(c))	15	890	13,350
Data for Simple Exploration EA (3809.401(c))	29	320	9,280
Modification of Plan of Operations (3809.430 and 3809.431)	107	320	34,240
Data for EIS (3809.432(a) and 3809.401(c))	2	4,960	9,920
Data for Standard EA (3809.432(a) and 3809.401(c))	35	890	31,150
Data for Simple Exploration EA (3809.432(a) and 3809.401(c))	70	320	22,400
Notice of Operations (3809.21)	396	32	12,672
Modification of Notice of Operations (3809.330)	167	32	5,344
Extension of Notice of Operations (3809.333)	140	1	140
Surface Management Surety Bond (3809.500) Form 3809–1	28	8	224
Surface Management Personal Bond (3809.500) Form 3809–2	170	8	1,360
Bond Rider Extending Coverage of Bond (3809.500) Form 3809–4	25	8	200
Surface Management Personal Bond Rider (3809.500) Form 3809–4a	69	8	552
Notification of Change of Operator and Assumption of Past Liability (3809.116) Form 3809–5	52	8	416
Notice of State Demand Against Financial Guarantee (3809.573)	1	8	8
Request for BLM Acceptance of Replacement Financial Instrument (3809.581)	13	8	104
Request for Reduction in Financial Guarantee and/or BLM Approval of Adequacy of Reclamation (3809.590)	78	8	624
Response to Notice of Forfeiture of Financial Guarantee (3809.596)	13	8	104
Appeals to the State Director (3809.800)	30	40	1,200

Type of response and 43 CFR citation A	Number of responses B	Hours per response C	Total hours (column B × column C) D
Federal/State Agreements (3809.200)	1	40	40
Totals	1,495		183,808

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2016–17756 Filed 7–26–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DQ0000]

Notice of Resource Advisory Council Meetings for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held August 31, 2016. Any adjustments to this meeting will be advertised on the Dominguez-Escalante NCA RMP Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

ADDRESSES: The meeting will be held at the Mesa County Courthouse, 544 Rood Avenue, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the RMP process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include presentations from BLM staff on management actions contained in the Proposed RMP and travel management plan, particularly those actions which are part of the Proposed Plan Alternative as a result of public comments on the Draft RMP.

These meetings are open to the public. The public may present written comments to the Council. Time will be allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual, oral comments may be limited at the discretion of the chair.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–17746 Filed 7–26–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21282; PPWOCRADN0–PCU00RP15.R50000]

Native American Graves Protection and Repatriation Review Committee: Notice of Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service is seeking nominations for one member of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Secretary of the Interior will appoint the member from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. The nominee must be a traditional Indian religious leader.

DATES: Nominations must be received by September 26, 2016.

ADDRESSES: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW., Washington, DC 20240, or via email *nagpra_dfo@nps.gov.*

SUPPLEMENTARY INFORMATION: The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), at 25 U.S.C. 3006, and the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2.

The Review Committee is responsible for:

1. Monitoring the NAGPRA inventory and identification process;
2. Reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;
3. Facilitating the resolution of disputes;
4. Compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;
5. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;
6. Consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and
7. Making recommendations regarding future care of repatriated cultural items.

The Review Committee consists of seven members appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are appointed from nominations submitted by national museum or scientific organizations. One member is appointed from a list of persons developed and consented to by all of the other members.

Members serve as Special Government Employees, which requires completion of annual ethics training. Members are appointed for 4-year terms and incumbent members may be reappointed for 2-year terms. The Review Committee's work takes place during public meetings. The Review Committee normally meets in person two times per year, normally for two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration.

Review Committee members serve without pay but shall be reimbursed for each day the member participates in Review Committee meetings. Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings (25 U.S.C. 3006(b)(4)). Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA Program Web site, at *https://www.nps.gov/NAGPRA/REVIEW/.*

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominations should:

1. Be submitted on the official letterhead of the Indian tribe or Native Hawaiian organization.
2. Affirm that the signatory is the official authorized by the Indian tribe or Native Hawaiian organization to submit the nomination.
3. If applicable, explain that the signatory is a traditional Native American religious leader.
4. Include the nominee's full legal name, home address, home telephone number, and email address.
5. Include the nominee's resume or a brief biography of the nominee, in which the nominee's NAGPRA experience and ability to work as a member of a Federal advisory committee are addressed.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program (2253), National Park Service, 1849 C Street NW., Washington, DC 20240, or via email *nagpra_dfo@nps.gov.*

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–17692 Filed 7–26–16; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1334–1337 (Preliminary)]

Emulsion Styrene-Butadiene Rubber From Brazil, Korea, Mexico, and Poland; Institution of Antidumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1334–1337 (Preliminary) pursuant to the Tariff Act of 1930 ("the Act") to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, Mexico, and Poland, provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by September 6, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by September 13, 2016.

DATES: Effective July 21, 2016.

FOR FURTHER INFORMATION CONTACT: Nathanael N. Comly (*nathanael.comly@usitc.gov;* (202) 205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on July 21, 2016, by Lion Elastomers LLC (Port Neches, Texas) and East West Copolymer, LLC (Baton Rouge, Louisiana).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 11, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before August 9, 2016. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 16, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 21, 2016.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17713 Filed 7–26–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1013]

Certain Potassium Chloride Powder Products; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 15, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lehigh Valley Technologies, Inc. of Allentown, Pennsylvania; Endo Global Ventures of Bermuda; Endo Ventures Limited of Ireland; and Generics Bidco I, LLC (d/b/a Qualitest Pharmaceuticals and Par Pharmaceutical) of Huntsville, Alabama. The complaint alleges violations of section 337 based upon the importation into the United States, or the sale of certain potassium chloride powder products by reason of false advertising, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 21, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or the sale of certain potassium chloride powder products, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Lehigh Valley Technologies, Inc., 514 North 12th Street, Allentown, PA 18102
Endo Global Ventures, 22 Victoria Street, Hamilton HM 12, Bermuda
Endo Ventures Limited, Minerva House, Simmonscourt Road Ballsbridge, Dublin 4, Ireland
Generics Bidco I, LLC (d/b/a Qualitest Pharmaceuticals and Par Pharmaceutical), 130 Vintage Drive, Huntsville, AL 35811

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Viva Pharmaceutical Inc., 13880 Viking Place, Richmond, British Columbia, Canada V6V 1K8
Virtus Pharmaceuticals, LLC, 2649 Causeway Center Drive, Tampa, FL 33619
Virtus Pharmaceuticals OPCO II, LLC, 1321 Murfreesboro Pike, Nashville, TN 37217–2626

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17712 Filed 7–26–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–939]

Certain Three-Dimensional Cinema Systems and Components Thereof Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation. The Commission has issued a limited exclusion order prohibiting the importation of certain three-dimensional cinema systems, and components thereof, that infringe certain claims of the patents at issue. The Commission has also issued cease and desist orders directed to the two respondents. The remedial orders are suspended as to certain patent claims pending final resolution of a validity issue. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 12, 2014, based on a complaint filed by RealD, Inc. of Beverly Hills, California ("RealD"). 79 FR 73902–03 (Dec. 12, 2014). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain three-dimensional cinema systems, and components thereof, that infringe certain claims of U.S. Patent Nos. 7,905,602 ("the '602 patent"); 8,220,934 ("the '934 patent"); 7,857,455 ("the '455 patent"); and 7,959,296 ("the '296 patent"). *Id.* at 73902. The notice of investigation named as respondents MasterImage 3D, Inc. of Sherman Oaks, California, and MasterImage 3D Asia, LLC of Seoul, Republic of Korea (collectively, "MasterImage"). *Id.* at 73903. The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On July 23, 2015, the Commission terminated the investigation as to various of the asserted claims and the '602 patent in its entirety. Notice (July 23, 2015) (determining not to review Order No. 6 (July 2, 2015)); Notice (Aug. 20, 2015) (determining not to review Order No. 7 (Aug. 3, 2015)).

On September 25, 2015, the Commission determined on summary determination that RealD satisfied the economic prong of the domestic industry requirement through its significant investment in plant, significant investment in labor, and substantial investment in engineering, research, and development. Notice (Sept. 25, 2015) (determining to review in part Order No. 9 (Aug. 20, 2015)). The Commission, however, reversed the summary determination with respect to RealD's investment in equipment. *Id.*

On December 16, 2015, the presiding administrative law judge ("ALJ") issued a final initial determination ("ID") finding a violation of section 337 with respect to the three remaining asserted patents. The ALJ found that the asserted claims of the '455, '296, and '934 patents are infringed and not invalid or unenforceable. The ALJ found that the technical prong of the domestic industry requirement was satisfied for the '455, '296, and '934 patents. The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"), recommending that a limited exclusion order and cease and desist orders should issue and that a bond of 100 percent should be imposed during the period of Presidential review.

On December 29, 2015, MasterImage filed a petition for review challenging various findings in the final ID. On January 6, 2016, RealD filed a response to MasterImage's petition. On January 15, 2016, and January 19, 2016, MasterImage and RealD respectively filed post-RD statements on the public interest under Commission Rule 210.50(a)(4). The Commission did not receive any post-RD public interest comments from the public in response to the Commission notice issued on December 22, 2015. 80 FR 80795 (Dec. 28, 2015).

On February 16, 2016, the Commission determined to review the final ID in part and requested additional briefing from the parties on certain issues. 81 FR at 8744–45. Specifically, the Commission determined to review (1) the ID's construction of the "uniformly modulate" limitation recited in claims 1 and 17 of the '455 patent; (2) the ID's infringement findings with respect to the asserted claims of the '455 patent; (3) the ID's findings on validity of the asserted claims of the '455 patent; (4) the ID's finding of proper inventorship of the '296 patent; (5) the ID's findings on validity of the asserted claims of the '934 patent; and (6) the ID's finding regarding the technical prong of the domestic industry requirement with respect to the '455 patent. *Id.* at 8745. The Commission also solicited briefing from the parties and the public on the issues of remedy, the public interest, and bonding. *Id.*

On March 1, 2016, the parties filed initial written submissions addressing the Commission's questions and the issues of remedy, the public interest, and bonding. On March 11, 2016, the parties filed response briefs. No comments were received from the public. On April 18, 2016, the Commission requested additional briefing on the effect of a Final Written Decision issued by the Patent Trial and

Appeal Board of the U.S. Patent and Trademark Office ("PTAB") on April 14, 2016, finding certain claims of the '934 patent unpatentable, on the Commission's final determination. 81 FR 23749–50 (Apr. 22, 2016). On April 26, 2016, the parties filed initial written submissions addressing the Commission's question. On May 3, 2016, the parties filed response briefs.

Having examined the record of this investigation, including the final ID and the parties' submissions, the Commission has determined that RealD has proven a violation of section 337 based on infringement of claims 1–3, 9–11, 13, 15, 17–19, and 21 of the '455 patent; claims 1, 2, 7, 8, 11, and 12 of the '296 patent; and claims 1, 6, and 11 of the '934 patent. The Commission has determined to modify the ALJ's construction of the "uniformly modulate" limitation recited in claims 1 and 17 of the '455 patent. Under the modified construction, the Commission has determined that RealD has proven that the accused MasterImage Horizon 3D, 3D S, M, Rv1, and Rv2 products infringe the asserted claims of the '455 patent and that the technical prong of the domestic industry requirement is satisfied with respect to that patent. The Commission has determined that the asserted claims of the '455 patent are not invalid under 35 U.S.C. 102(e), 102(g), 103, and 112, ¶¶ 1 and 2. The Commission has determined that the asserted claims of the '296 patent are not invalid under 35 U.S.C. 116 for improper inventorship. The Commission has also determined that the asserted claims of the '934 patent are not invalid under 35 U.S.C. 102(g) and 103.

The Commission has determined the appropriate remedy is a limited exclusion order prohibiting the importation of certain three-dimensional cinema systems, and components thereof, that infringe the asserted claims of the '455, '296, and '934 patents and cease and desist orders directed against MasterImage. The Commission has determined the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders.

In view of the PTAB's Final Written Decision finding certain claims of the '934 patent unpatentable, the Commission has determined to suspend the enforcement of the limited exclusion order and cease and desist orders as to claims 1, 6, and 11 of the '934 patent pending final resolution of the PTAB's Final Written Decision. *See* 35 U.S.C. 318(b). The Commission has also determined to set a bond in the amount of 100 percent of the entered value of excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17711 Filed 7–26–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1014]

Certain Intermediate Bulk Containers; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 22, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Schütz Container Systems Inc. of North Branch, New Jersey. The complaint was supplemented on June 29 and July 7, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States or sale of certain composite intermediate bulk containers by reason of infringement of certain trade dress, the threat or effect of which is to substantially destroy or injure a domestic industry.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 21, 2016, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States or sale of certain composite intermediate bulk containers, the threat or effect of which is to substantially destroy or injure a domestic industry;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Schütz Container Systems Inc., 200 Aspen Hill Road, North Branch, NJ 08876–5950.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Zhenjiang Runzhou Jinshan Packaging Factory, Road Dantu City Industrial Park, Hengshun Zhenjiang, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

By order of the Commission.

Issued: July 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17745 Filed 7–26–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Geoffrey D. Peterson, N.P.; Decision and Order

On April 14, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Geoffrey D. Peterson, N.P. (hereinafter, Registrant), of Hixson, Tennessee. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration MP3330545,[1] pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a mid-level practitioner, and the denial of any applications on two grounds. GX 1, at 1.

First, the Show Cause Order alleged that effective January 27, 2015, the Tennessee Nursing Board had summarily suspended Registrant's nurse practitioner license. *Id.* at 2. The Order thus alleged that Registrant is currently without authority to dispense controlled substances in the State in which he is registered with the Agency and therefore, his registration is subject to revocation. *Id.* (citing 21 U.S.C. 802(21), 823(f), 824(a)(3)).

Second, the Show Cause Order alleged that Registrant materially falsified his October 7, 2014 application for the above registration. *Id.* (citing 21 U.S.C. 824(a)(1)). More specifically, the Show Cause Order alleged that on February 17, 2014, Registrant was arrested by local authorities and charged with the "unlawful possession of marijuana." *Id.* The Order then alleged that the charge was still pending at the time Registrant submitted his renewal application, and that "[o]n this application, [he] did not answer 'yes' to the . . . liability question: 'Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or is any action pending?' " *Id.* The Government thus alleged that Registrant violated 21 U.S.C. 824(a)(1).[2]

The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2–3 (citing 21 CFR 1301.43, 1301.46). On April 23, 2015, the Show Cause Order was personally served on Registrant by a DEA Diversion Investigator. GX 3.

On April 7, 2016, the Government forwarded a Request for Final Agency Action. Therein, the Government represented that neither Registrant "nor anyone representing him has requested a hearing or sent any other correspondence to DEA." Req. for Final Agency Action, at 7. Based on the Government's representation, I find that 30 days have now passed since the Show Cause Order was served on Registrant and that he has neither requested a hearing nor submitted a written statement in lieu of hearing. 21 CFR 1301.43(b) & (c). Accordingly, I find that Registrant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on the evidence submitted by the Government. *Id.* § 1301.43(d) & (e). I make the following findings.

Findings

Registrant is the holder of DEA Certificate of Registration MP3330545, pursuant to which he is authorized to dispense controlled substances in schedules II through V, as a mid-level practitioner, at the registered address of Hormone Replacement Specialists, 5550 Highway 153, Suite 103, Hixson, Tennessee. GX 7, at 1. Registrant renewed this registration on October 7, 2014, at which time he was required to answer the following question: "Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or been excluded or directed to be excluded from participation in a medicare or state health care program, or any [sic] such action pending?" GX 6. Registrant entered "N" for no. *Id.*

On February 17, 2014, Registrant was arrested by a member of the Sequatchie County Sheriff's Department and charged with felony possession of marijuana, an offense under Tenn. Code Ann. § 39–17–415. GX 5, at 1, 3, 6. According to a March 31, 2015 letter from the Clerk of the General Sessions Court of Sequatchie County, criminal charges were pending against Registrant "as of October 31, 2014." GX 8. The Clerk's letter further states that the "[c]harges were expunged on 11/21/2014." *Id.*

Registrant was also previously licensed by the Tennessee Board of Nursing (Board) as an advanced practice nurse (APN) and held a Certificate of Fitness to prescribe. GX 4, at 2. However, on January 27, 2015, the Board ordered the summary suspension of Registrant's advance practice nurse license and Certificate of Fitness to Prescribe. *Id.* at 7. The Board based its order on findings which included that on December 19, 2014, a search warrant was executed at Registrant's residence during which the search team found "prefilled syringes of morphine, vials of morphine, shopping bags full of used needles, a bottle of prednisone, and a bottle of animal morphine," and that "[t]he syringes of morphine are of unknown origin with no identifying prescription information." *Id.* at 3. The search team also found a pipe containing marijuana residue. *Id.*

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[1] While Government also alleges that Registrant holds an additional registration (MP1971731) and seeks its revocation as well, in its Request for Final Agency Action, the Government acknowledges that this registration had expired shortly before the issuance of the Show Cause Order. To ensure that Registrant did not file a renewal application for this registration, I have taken official notice of Registrant's registration record with the Agency. *See* 5 U.S.C. 556(e). That record shows that Registrant allowed this registration to expire and did not file an application to renew it whether timely or not. Accordingly, I find that this proceeding is moot insofar as it seeks the revocation of this registration.

[2] While the Government contends that Registrant violated section 824(a)(1), this provision is simply a grant of authority to the Attorney General to revoke or suspend a registration and does not itself impose a substantive rule of conduct. Rather, the rule of conduct is imposed by 21 U.S.C. 843(a)(4)(A) ("It shall be unlawful for any person knowingly or intentionally . . . to furnish false or fraudulent material information in, or omit any material information from, any application . . . filed under this subchapter[.]").

The Board also based its order on findings that from April 1, 2013 through March 31, 2014, Registrant was "a top 50 prescriber in Tennessee based on morphine equivalents," and that in a letter to the Board, he had stated that "he had no intention of curbing his prescribing practices." *Id.* at 4. The Board further found that on January 12, 2015, Registrant had "obstructed a Department of Health investigation" into his activities at a pain clinic, by "refus[ing] to allow access to [the] clinic or to cooperate in any fashion, leaving the Department unable to verify the conditions of the clinic or obtain patient charts to determine whether [he] has a supervising physician or a medical director at the pain clinic." *Id.*

Based on these and other findings, the Board found that Registrant "[i]s unfit or incompetent by reason of negligence, habits or other cause"; "[i]s guilty of unprofessional conduct"; and "[h]as violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate any provision of this chapter or any lawful order of the board." *Id.* at 6. (citing Tenn. Code Ann. § 63–7–115(a)(1)). The Board then explained that Registrant's "impaired judgment combined with the high amount of controlled substances he prescribes . . . create[s] an extreme and untenable danger to his patients and the public of Tennessee" and his "actions constitute a serious and immediate danger to the public's health, safety and welfare and require emergency action by this Board." *Id.*

Subsequently, on May 6, 2015, Registrant entered into an Agreed Order with the Board, which the latter approved on August 6, 2015 and which suspended his APN license and his Certificate of Fitness to prescribe.[3] GX 10, at 8. The Order also imposed numerous conditions, including that he voluntarily surrender his DEA registrations within 10 days of the Board's ratification of the Order. *Id.* at 10.

Therein, the parties agreed to a variety of factual findings pertinent to his prescribing of controlled substances. These included that during 2011, he had worked at a Chattanooga-based clinic (Superior One Medical Clinic) and "wrote prescriptions for schedule II controlled substances with no medical necessity or supporting documentation as to the condition which would warrant such prescribing." *Id.* at 3. As for his prescribing at Holistic Health and Primary Care (a pain clinic in Hixson, TN which was owned by his father), the Board reviewed 10 patients charts maintained by him "from March 2012 to December 2013" and found that it reflected treatment "with controlled substances in amounts and/or durations not medically necessary, advisable, or justified." *Id.* The Board also found that "he typically prescribed opioids in amounts not medically necessary," that he "does not utilize alternative treatments . . . for his pain management patients and neglected to establish a treatment plan . . . other than the continuation of controlled substances," and that while he had patients provide urine drug tests, he "often failed to address inconsistent results." *Id.* at 3–4.

Registrant also stipulated to the findings of the Summary Suspension Order regarding the various controlled substances and paraphernalia found during the execution of a search warrant at his residence, the findings that he was a Top 50 prescriber of morphine equivalents and had told the Board that he did not intend to curb his prescribing, and the findings related to his obstruction of the Department of Health's investigation of his father's pain clinic.[4]

Discussion

Registrant's Lack of State Authority

Pursuant to 21 U.S.C. 824(a)(3), "[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." This Agency has further held that notwithstanding that this provision grants the Agency authority to suspend or revoke a registration, other provisions of the Controlled Substances Act "make plain that a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances." *James L. Hooper,* 76 FR 71371, 71372 (2011), *pet. for rev. denied, Hooper* v. *Holder,* 481 F. App'x 826 (4th Cir. 2012). *See also Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.").

These provisions include section 102(21), which defines the term "practitioner" to "mean[ ] a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice," 21 U.S.C. 802(21), as well as section 303(f), which directs that "[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." *Id.* § 823(f). As the Supreme Court has explained, "[i]n the case of a physician, this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice." *United States* v. *Moore,* 423 U.S. 122, 140–41 (1975).

Here, it undisputed that the Tennessee Board of Nursing has suspended Registrant's advance practice nursing license and his Certificate of Fitness to prescribe. I therefore find that Registrant is without authority to dispense controlled substances in Tennessee, the State in which he is registered. Because Registrant no longer meets the CSA's prerequisite for maintaining a practitioner's registration, I will order that his existing registration be revoked.

Material Falsification

Pursuant to section 304(a)(1), the Attorney General is also authorized to suspend or revoke a registration "upon a finding that the registrant . . . has materially falsified any application filed pursuant to or required by this subchapter." 21 U.S.C. 824(a)(1). Based on Registrant's failure to disclose his arrest for marijuana possession on his October 7, 2014 application, the Government contends that he materially falsified the application when he answered "N" or no to the question: "Has the applicant ever been convicted of a crime in connection with controlled substance(s) under state or federal law, or been excluded or directed to be excluded from participation in a medicare or state health care program, or any [sic] such action pending?" GX 6.

Notably, the Government does not argue that Registrant has been convicted of the unlawful possession of marijuana, let alone that he had been convicted of the offense prior to submitting his application on October 7, 2014. Indeed, the only evidence it offers relevant to whether Registrant has been convicted of a controlled substance offense is the state court clerk's letter stating that Registrant "did have criminal charges pending against him . . . as of October 31, 2014" and that the "[c]harges were expunged" several weeks later.

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[3] I take official notice of the Agreed Order and have made it a part of the record. *See* 5 U.S.C. 556(e).

[4] Registrant also stipulated to findings that he had abused animals and his 88-years old father, who was listed as his supervising physician, as well as that he had "obstructed attempts by three independent agencies to determine the welfare of" his father. Agreed Order, at 4–7.

The clerk's letter does not, however, even identify what charges were pending against Registrant at the time. Moreover, the Government does not rely on the line of cases holding that a deferred adjudication of an offense falling under 21 U.S.C. 824(a)(2) which ultimately results in dismissal of the charge is still a conviction for purposes of the Controlled Substances Act and that the failure to disclose such conviction on a subsequent application is a material falsification. *See Hoxie* v. *DEA,* 419 F.3d 477, 481(6th Cir. 2005) (upholding Agency's finding that practitioner committed material falsification when he failed to disclose a controlled substance conviction which was expunged). *See also Pamela Monterosso,* 73 FR 11146, 11148 (2008) (citing *David A. Hoxie,* 69 FR 51477, 51478 (1994); *Eric A. Baum,* 53 FR 47272, 42274 (1988)); *see also Kimberly Maloney,* 76 FR 60922, 60922 (2011); *Mark De La Lama,* 76 FR 20011, 20013–14, 20019–20 (2011).

Instead, the Government argues that Registrant materially falsified his application because "the new application required that [Registrant] disclose this arrest because the application asked: 'Has the applicant ever been convicted of a crime in connection with controlled substance(s) or is any action pending?' " Request for Final Agency Action, at 5–6. The question does not, however, require the disclosure of an arrest. Rather, it requires the disclosure of "any action pending," and while this is reasonably read to include a criminal prosecution for a controlled substance offense which is ongoing at the time an application is submitted, the Government's evidence establishes only that charges were pending 24 days after Registrant submitted his application and not on the date he submitted his application. While it may be that the marijuana possession charge was pending on October 7, 2014 and was expunged pursuant to a deferred adjudication, which under Agency precedent constitutes a conviction even where the conviction is later expunged, the Government did not produce any evidence establishing that this was the basis for the expungement of the charge.

Accordingly, I find that the Government has failed to provide substantial evidence to support its contention that Registrant materially falsified his application. Nonetheless, because Registrant no longer holds authority under Tennessee law to dispense controlled substances, he is not entitled to maintain his registration. Accordingly, I will order that his registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration MP3330545 issued to Geoffrey D. Peterson, N.P., be, and it hereby is, revoked. I further order that any application of Geoffrey D. Peterson to renew or modify the above registration be, and it hereby is, denied. This Order is effective immediately.[5]

Dated: July 19, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17722 Filed 7–26–16; 8:45 am]

BILLING CODE 4410–09–P

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[5] Based on the findings of the Tennessee Board, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67. I further note that as of this date, Registrant has failed to surrender his DEA registration as required by the Board.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0016]

Nemko-CCL, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for Nemko-CCL, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Nemko-CCL, Inc. (CCL), as an NRTL. CCL's expansion covers the addition of two recognized testing and certification sites and twenty-two additional test standards to their NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CCL submitted two applications, dated January 28, 2015 (OSHA–2013–0016–0008) and January 26, 2016 (OSHA–2013–0016–0011), to expand its recognition to include the addition of two recognized testing and certification sites located at: Nemko USA, Inc., 2210 Faraday Avenue, Suite 150, Carlsbad, California 92008; and Nemko Canada, Inc., 303 River Road, Ottawa, Ontario, Canada K1V 1H2. Additionally, the January 2016 application sought to relocate their headquarters to Ottawa, Canada and recognize a new administrative site, Nemko-CCL, Inc., 2964 West 4700 South Suite 200, Salt Lake City, Utah 84129. OSHA staff performed a detailed analysis of the application and other pertinent information. OSHA staff also performed on-site review of the testing and certification facilities for Nemko Canada, Inc. on November 17–18, 2015 and Nemko USA, Inc. on January 11–12, 2016. The Nemko-CCL Salt Lake site was assessed via an electronic audit (no on-site visit).

CCL's first application also requested the addition of twenty-two test standards to its scope of recognition. OSHA staff performed a detailed analysis of the application packet, reviewed other pertinent information, and conducted the on-site reviews described above in relation to this application.

OSHA published the preliminary notice announcing CCL's expansion application in the **Federal Register** on May 17, 2016 (81 FR 30566). The Agency requested comments by June 1, 2016, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion of CCL's scope of recognition.

To obtain or review copies of all public documents pertaining to the CCL's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2013–0016 contains all materials in the record concerning CCL's recognition.

II. Final Decision and Order

OSHA staff examined CCL's expansion application, conducted detailed on-site assessments, and examined other pertinent information. Based on its review of this evidence, OSHA finds that CCL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below.

OSHA, therefore, is proceeding with this final notice to grant CCL's scope of recognition to include the two new test sites. OSHA limits the expansion of CCL's recognition to include the sites at Nemko Canada Inc., Ottawa, Ontario, Canada; Nemko-CCL, Inc. Salt Lake City, Utah, Nemko USA, Inc., Carlsbad, California. Further, OSHA approves CCL's request to relocate its headquarters to the Ottawa, Canada site and recognizes the new administrative site at the Nemko-CCL Salt Lake site. Additionally, OSHA acknowledges the name change of Nemko-CCL, Inc. to Nemko North America, Inc. and will adjust future correspondence and reference to Nemko North America, Inc. [NEMKO]. OSHA's recognition of these sites limits CCL to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in CCL's scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

OSHA is also proceeding with this final notice to grant CCL's scope of recognition to include the twenty-two test standards. OSHA limits this expansion of CCL's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN CCL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60335–1	Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.
UL 60335–2–24	Safety Requirement for Household and Similar Electrical Appliances, Part 2: Refrigerating Appliances, Ice-Cream Appliances and Ice Makers.
UL 197	Commercial Electric Cooking Appliances.
UL 250	Household Refrigerators and Freezers.
UL 427	Refrigerating Units.
UL 471	Commercial Refrigerators and Freezers.
UL 499	Electric Heating Appliances.
UL 507	Electric Fans.
UL 561	Floor Finishing Machines.
UL 563	Ice Makers.
UL 705	Power Ventilators.
UL 751	Vending Machines.
UL 763	Motor-Operated Commercial Food Preparing Machines.
UL 859	Personal Grooming Appliance.
UL 867	Electrostatic Air Cleaners.
UL 982	Motor-Operated Food Preparing Machines.
UL 1017	Electric Vacuum Cleaning Machines and Blower Cleaners.
UL 1026	Electric Household Cooking and Food-Serving Appliances.
UL 1082	Household Electric Coffee Makers and Brewing-Type Appliances.
UL 1083	Household Electric Skillets and Frying-Type Appliances.
UL 1431	Personal Hygiene and Health Care Appliances.
UL 1563	Electric Spas, Equipment Assemblies and Associated Equipment.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as an American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, CCL also must abide by the following conditions of the recognition:

1. CCL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. CCL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. CCL must continue to meet the requirements for recognition, including all previously published conditions on CCL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of CCL, subject to these limitations and conditions specified above.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 19, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–17793 Filed 7–26–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Collection; Comment Request

AGENCY: Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Survivor's Form for Benefits (CM–912). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 26, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: This collection of information is required to administer the benefit payment provisions of the Black Lung Act for survivors of deceased miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits. Form CM–912 is authorized for use by the Black Lung Benefits Act 30 U.S.C. 901, *et seq.*, 20 CFR 410.221 and CFR 725.304 and is used to gather information from a survivor of a miner to determine if the survivor is entitled to benefits. This information collection is currently approved for use through December 31, 2016.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to gather information to determine eligibility for benefits of a survivor of a Black Lung Act beneficiary.

Type of Review: Extension.
Agency: Office of Workers' Compensation Programs.
Title: Survivor's Form for Benefits.
OMB Number: 1240–0027.
Agency Number: CM–912.
Affected Public: Individuals or households.
Total Respondents: 1,100.
Total Annual Responses: 1,100.
Average Time per Response: 8 minutes.
Estimated Total Burden Hours: 147.
Frequency: One time.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $450.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 21, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2016–17725 Filed 7–26–16; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Collection of Existing Collection; Comment Request

AGENCY: Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Department of Labor

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Request for State or Federal Workers' Compensation Information (CM–905). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 26, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 901) and 20 CFR 725.535, require that DOL Black Lung benefit payments to a beneficiary for any month be reduced by any other payments of state or federal benefits for workers' compensation due to pneumoconiosis. To ensure compliance with this mandate, DCMWC must collect information regarding the status of any state or Federal workers' compensation claim, including dates of payments, weekly or lump sum amounts paid, and other fees or expenses paid out for this award, such as attorney fees and related expenses associated with pneumoconiosis. Form CM–905 is used to request the amount of those workers' compensation benefits. This information collection is currently approved for use through December 31, 2016.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to gather information to determine the amounts of Black Lung benefits paid to beneficiaries. Black Lung amounts are reduced dollar for dollar, for other Black Lung related workers' compensation awards the beneficiary may be receiving from State or Federal programs.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for State or Federal Workers' Compensation Information.

OMB Number: 1240–0032.

Agency Number: CM–905.

Affected Public: Federal Government; State, Local or Tribal Government.

Total Respondents: 2,000.

Total Annual Responses: 2,000.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 500.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 21, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2016–17726 Filed 7–26–16; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–044]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by August 26, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at

Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0002, 2 items, 2 temporary items). Financial and administrative records related to the cotton transition assistance and cotton ginning cost-sharing programs.

2. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0003, 1 item, 1 temporary item). Records related to approved warehouses for storing agricultural commodities.

3. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0004, 1 item, 1 temporary item). Records related to price support payments for producers of wool and mohair commodities.

4. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0005, 1 item, 1 temporary item). Records related to supply and foreign purchases.

5. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0006, 1 item, 1 temporary item). Records related to dairy indemnity payments.

6. Department of Agriculture, Commodity Credit Corporation (DAA–0161–2016–0007, 1 item, 1 temporary item). Records related to price support programs.

7. Department of Agriculture, Farm Service Agency (DAA–0145–2015–0010, 1 item, 1 temporary item). Master file of an electronic information system that contains records pertaining to the consolidated natural disaster assistance program.

8. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0006, 1 item, 1 temporary item). Records related to loan deficiency payments made through the marketing assistance program.

9. Department of the Army, Agency-wide (DAA–AU–2016–0010, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to the readiness status of equipment and materiel.

10. Department of the Army, Agency-wide (DAA–AU–2016–0021, 1 item, 1 temporary item). Master files of an electronic information system used to control and monitor a wastewater treatment facility.

11. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0043, 1 item, 1 temporary item). Master files of an electronic information system used for tracking and management of weapon system parts including stock numbers, name assignments, location and related information.

12. Department of Defense, National Reconnaissance Office (N1–525–12–7, 6 items, 5 temporary items). Records related to varied security functions and counterintelligence case files. Proposed for permanent retention are policy and subject files.

13. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0006, 1 item, 1 temporary item). Master files of an electronic information system that manages training for military service members and their families in quality-of-life issues such as financial readiness, health and wellness, and deployment and transition.

14. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0011, 1 item, 1 temporary item). Master files of an electronic information system used to screen individuals for assignment eligibility as Sexual Assault Prevention and Response Coordinators and Victim Advocates.

15. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0013, 4 items, 3 temporary items). Records relating to the Federal Voting Assistance Program including research into new technology, general correspondence, and call center files. Proposed for permanent retention are program guidance and promotional materials.

16. Department of Energy, Naval Nuclear Propulsion Program (DAA–0434–2015–0010, 39 items, 39 temporary items). Records regarding personnel management including acknowledgement forms, badge photographs, dispensary logs, nondisclosure agreements, temporary employment, specialized and other training, labor relations, computer access, and related matters.

17. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0001, 2 items, 1 temporary item). Records relating to the agency welfare waiver program to include minor welfare waiver requests. Proposed for permanent retention are waiver records that document efforts from states to significantly reform welfare programs.

18. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0003, 4

items, 3 temporary items). Records documenting emergency preparedness and response activities, including guidance, emergency response and recovery operation, and incident management team information. Proposed for permanent retention are after-action reports analyzing the response to significant natural or man-made disasters.

19. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0004, 1 item, 1 temporary item). Training records, including technical assistance documents used by agency staff and contracted vendors to assist in employee development and program performance.

20. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0005, 2 items, 2 temporary items). Records relating to rulemaking, including drafts, guidance documents, background materials, regulation logs, and correspondence.

21. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–0016–0006, 8 items, 2 temporary items). Applications, petitions, and requests for deferred action for childhood arrivals when incomplete, unsigned, or rejected for incorrect fees or insufficient funds. Proposed for permanent retention are all other applications, petitions, and requests for deferred action for childhood arrivals (approved, denied, abandoned, withdrawn, terminated, and administratively closed).

22. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–0016–0007, 8 items, 2 temporary items). Applications, petitions, and requests for temporary protected status when incomplete, unsigned, or rejected for incorrect fees or insufficient funds. Proposed for permanent retention are all other applications, petitions, and requests for temporary protected status (approved, denied, abandoned, withdrawn, terminated, and administratively closed).

23. Department of Housing and Urban Development, Office of the Inspector General (DAA–0207–2014–0002, 3 items, 1 temporary item). Includes non-significant case files, copies of reports, administrative correspondence, and working papers and drafts. Proposed for permanent retention are records of the Inspector General including policy and program records, and significant case files.

24. Department of State, Bureau of Counterterrorism (DAA–0059–2014–0012, 8 items, 8 temporary items). Subject and chronological files for the Office of Homeland Security.

25. Department of State, Bureau of Counterterrorism (DAA–0059–2014–0013, 5 items, 5 temporary items). Records of the Office of Terrorist Screening and Interdiction Programs, including non-recordkeeping copies of agreements, working files, and employee-related administrative records.

26. Department of State, Bureau of Counterterrorism (DAA–0059–2014–0014, 2 items, 2 temporary items). Records of the Office of Regional Affairs and Programs, including copies of position papers, policy statements and guidance, and working files.

27. Department of State, Bureau of Human Resources (DAA–0059–2016–0004, 3 items, 1 temporary item). Working files of the Foreign Service Selection Board. Proposed for permanent retention are Board precepts and final reports.

28. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (DAA–0059–2014–0023, 3 items, 2 temporary items). Records of the Office of Environmental Quality and Transboundary Issues related to application review files to include supporting documentation and comments. Proposed for permanent retention are records compiled during each phase of the permitting process for projects.

29. Department of the Treasury, Internal Revenue Service (DAA–0058–2015–0006, 3 items, 3 temporary items). Routine contract, renewal, and criminal investigation case files of intermediary agreements between the agency and foreign financial institutions.

30. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0006, 1 item, 1 temporary item). Agency employee wage garnishment data records.

31. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0014, 1 item, 1 temporary item). Master files of an electronic information system used by the agency and its partners to produce advertising materials primarily related to refundable tax credits.

32. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0015, 1 item, 1 temporary item). Master files of an electronic information system used to support the individual tax return audit appeal process.

33. Commodity Futures Trading Commission, Agency-wide (DAA–0180–2016–0002, 3 items, 3 temporary items). Records of reviews and audits of compliance with regulations and laws by market participants.

34. General Services Administration, Agency-wide (DAA–0269–2016–0010, 2 items, 1 temporary item). Routine security program records. Proposed for permanent retention are records related to the collection and reporting of security programs, including inspection reports, regulations and related correspondence.

35. General Services Administration, Agency-wide (DAA–0269–2016–0011, 3 items, 2 temporary items). Information technology support program records. Proposed for permanent retention are records related to standards and specifications published by the General Services Administration.

36. General Services Administration, Agency-wide (DAA–0269–2016–0012, 5 items, 2 temporary items). Records related to professional services performed for other agencies. Proposed for permanent retention are records related to Presidential transitions, oversight responsibilities associated with the Federal Advisory Committee Act, and management of Federal regulations and manuals.

37. General Services Administration, Agency-wide (DAA–0269–2016–0013, 5 items, 5 temporary items). Records related to customer service and business development.

38. Securities and Exchange Commission, Office of Compliance Inspections and Examinations (DAA–0266–2015–0003, 2 items, 2 temporary items). Master file of an electronic information system containing records relating to nationwide examinations of entities regulated and registered by the Securities and Exchange Commission.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–17833 Filed 7–26–16; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on August 17, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information pursuant to number 5 U.S.C.552b(c)(9)(B).

The agenda for the subject meeting shall be as follows:

Wednesday, August 17, 2016—8:30 a.m. Until 5:00 p.m.

The Subcommittee will be briefed on criteria and guidance for NRC decisionmaking related to possible regulatory actions in accordance with COMSECY–15–0019. The Subcommittee will also hear the NRC staff's plans for addressing comments received on SECY–15–0065, "Proposed Rule: Mitigation of Beyond-Design-Basis Events." The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mike Snodderly (Telephone: 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240–888–9835) to be escorted to the meeting room.

Dated: July 20, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–17767 Filed 7–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–409 and 72–046; NRC–2015–0279]

LaCrosseSolutions, LLC, Dairyland Power Cooperative, La Crosse Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions from several of the record keeping requirements in its regulations in response to a request from LaCrosse*Solutions,* LLC, and the Dairyland Power Cooperative (collectively, the licensee). Specifically, the licensee requested that the La Crosse Boiling Water Reactor be granted a partial exemption from regulations that require retention of records for certain systems, structures, and components until the termination of the operating license. The NRC is also issuing an exemption from the portion of the regulations that requires certain records for spent fuel in storage to be kept in duplicate for the La Crosse Boiling Water Reactor Independent Spent Fuel Storage Installation.

ADDRESSES: Please refer to Docket ID NRC–2015–0279 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In most cases, documents available in the ADAMS Legacy Library are available to the public on microfiche in the NRC's PDR.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marlayna G. Vaaler, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–3178; email: *Marlayna.Vaaler@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The La Crosse Boiling Water Reactor (LACBWR) was an Atomic Energy Commission (AEC) Demonstration Project Reactor that first went critical in 1967, commenced commercial operation in November 1969, and was capable of producing 50 megawatts electric. The LACBWR is located on the east bank of the Mississippi River in Vernon County, Wisconsin. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the Dairyland Power Cooperative (DPC) and granted it Provisional Operating License No. DPR–45 on August 28, 1973 (ADAMS Legacy Accession No. 3001002570).

The LACBWR permanently ceased operations on April 30, 1987 (ADAMS Legacy Accession No. 8705280175), and reactor defueling was completed on June 11, 1987 (ADAMS Legacy Accession No. 8707090206). In a letter dated August 4, 1987 (ADAMS Legacy Accession No. 8708060296), the NRC terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR–45, and granted the licensee a possess-but-not-operate status. By letter dated August 18, 1988 (ADAMS Legacy Accession No. 8808240330), the NRC amended DPC's Provisional Operating License No. DPR–

45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at LACBWR. Therefore, pursuant to the provisions of section 50.82(a)(1)(iii) and 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), DPC's part 50 license does not authorize operation of LACBWR or emplacement or retention of fuel into the reactor vessel.

The NRC issued an order to authorize decommissioning of LACBWR and approve the licensee's proposed Decommissioning Plan (DP) on August 7, 1991 (ADAMS Legacy Accession No. 9108160044). Because the NRC approved DPC's DP before August 28, 1996, pursuant to 10 CFR 50.82, the DP is considered the Post-Shutdown Decommissioning Activities Report (PSDAR) for LACBWR. The PSDAR public meeting was held on May 13, 1998, and subsequent updates to the LACBWR decommissioning report have combined the DP and PSDAR into the "LACBWR Decommissioning Plan and Post-Shutdown Decommissioning Activities Report" (D-Plan/PSDAR).

The DPC developed an onsite Independent Spent Fuel Storage Installation (ISFSI) and completed the movement of all 333 spent nuclear fuel elements from the Fuel Element Storage Well to dry cask storage at the ISFSI by September 19, 2012 (ADAMS Accession No. ML12290A027). The remaining associated buildings and structures are ready for dismantlement and decommissioning activities.

By Order dated May 20, 2016 (ADAMS Accession No. ML16123A073), the NRC approved the direct transfer of Possession Only License No. DPR–45 for LACBWR from DPC to LaCrosse *Solutions,* LLC (LS), a wholly-owned subsidiary of Energy *Solutions,* LLC, and approved a conforming license amendment, pursuant to 10 CFR 50.80 and 50.90, to reflect the change. The Order was published in the **Federal Register** on June 2, 2016 (81 FR 35383). The transfer assigns DPC's licensed possession, maintenance, and decommissioning authorities for LACBWR to LS in order to implement expedited decommissioning at the LACBWR site. LS also assumed responsibility as the primary licensee for all outstanding licensing actions that were submitted by DPC prior to the license transfer being implemented.

II. Request/Action

By letter dated October 13, 2015 (ADAMS Accession No. ML15314A068), as supplemented by letter dated December 2, 2015 (ADAMS Accession No. ML15357A054), which replaced the October 13, 2015, submittal in its entirety, the licensee filed a request for NRC approval of a permanent exemption from the record retention requirements of: (1) 10 CFR part 50, appendix A, Criterion 1, which requires certain records be retained throughout the life of the unit; (2) 10 CFR 50, appendix B, Criterion XVII, which requires certain records be retained consistent with regulatory requirements for a duration established by the licensee; (3) 10 CFR 50.59(d)(3), which requires certain records be maintained until termination of a license issued pursuant to 10 CFR part 50; (4) 10 CFR 50.71(c), which requires certain records be maintained consistent with various elements of the NRC regulations, facility technical specifications and other licensing bases documents; and (5) 10 CFR 72.72(d), which requires that certain records of spent fuel and high-level radioactive waste in storage be kept in duplicate in a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. The request was made pursuant to 10 CFR 50.12, "Specific exemptions," and 10 CFR 72.7, "Specific exemptions."

The licensee is proposing to: (1) Eliminate these records for LACBWR when the licensing basis requirements previously applicable to the nuclear power unit and associated systems, structures, and components (SSCs) are no longer effective (*e.g.,* removed from the DP/PSDAR, Defueled Safety Analysis Report, and/or technical specifications by appropriate change mechanisms); and (2) eliminate the duplicate copies of spent fuel records for the LACBWR ISFSI by storing them using the same procedures and processes used for the LACBWR spent fuel records, which are stored in accordance with the NRC-approved LACBWR Quality Assurance Program Description (QAPD) Manual. The licensee cites record retention exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260277), Millstone Power Station, Unit 1, (ADAMS Accession No. ML070110567), and Haddam Neck Plant (ADAMS Accession No. ML052160088), as precedents for the NRC granting the licensee's request.

Records associated with residual radiological activity and programmatic controls necessary to support decommissioning, such as security and quality assurance (QA), are not affected by the exemption request because they will be retained as decommissioning records until the termination of the LACBWR license. In addition, the licensee did not request an exemption associated with any other record keeping requirements for the storage of spent fuel at its ISFSI under 10 CFR part 50 or the general license requirements of 10 CFR part 72. No exemption was requested from the decommissioning records retention requirements of 10 CFR 50.75, or any other requirements of 10 CFR part 50 applicable to decommissioning.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in 10 CFR 50.12(a)(2).

Pursuant to 10 CFR 72.7 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 72 when it determines that the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

As described in the DP/PSDAR and subsequent updates, LACBWR is being returned to a condition suitable for unrestricted use. According to the December 2, 2015, submittal, there are no SSCs classified as safety-related remaining on the site, and the nuclear reactor and essentially all associated SSCs in the nuclear steam supply system and balance of plant that supported the generation of power have been retired in place, are being prepared for removal, or have already been dismantled. The only SSCs that remain operable are associated with the liquid waste discharge system. The plant is considered to be in a "cold and dark" condition awaiting final dismantlement and the completion of decommissioning.

The licensee's general justification for eliminating records associated with LACBWR SSCs that have been or will be removed from service under the NRC license, dismantled, or demolished, is that these SSCs will not in the future serve any LACBWR functions regulated by the NRC. The licensee's dismantlement plans involve evaluating SSCs with respect to the current facility safety analysis; progressively removing them from the licensing basis where necessary through appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or via

NRC-approved technical specification changes, as applicable); revising the Defueled Safety Analysis Report as necessary; and then proceeding with an orderly dismantlement.

While the licensee intends to retain the records required by its license as the project transitions from current plant conditions to a fully decommissioned state, plant dismantlement will obviate the regulatory and business need for maintenance of most records. As the SSCs already removed from the licensing basis are subsequently dismantled and the need for the associated records is, on a practical basis, eliminated, the licensee proposes that they be exempted from the records retention requirements for SSCs and historical activities that are no longer relevant, thereby eliminating the associated regulatory and economic burdens of creating alternative storage locations, relocating records, and retaining irrelevant records.

The exemption request states that all records necessary for spent fuel and spent fuel storage SSCs and activities have been, and will continue to be, retained for LACBWR and the LACBWR ISFSI in accordance with the applicable sections of 10 CFR part 50 and 10 CFR part 72. However, under the proposed exemption from 10 CFR 72.72(d), the licensee would eliminate the duplicate storage requirement for the LACBWR ISFSI spent fuel records and instead store them in the same manner used for the LACBWR plant's QA records, using a single storage facility subject to the same procedures and processes outlined in the NRC-approved QAPD. The NRC previously determined that the QAPD meets the applicable requirements of appendix B to 10 CFR part 50. Under the provisions of the QAPD, both the LACBWR ISFSI and plant's spent fuel documents are considered QA records to be stored in accordance with the QAPD.

According to Revision 29 of the LACBWR QAPD, document storage requirements must meet American National Standards Institute (ANSI) standard N45 2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records," which specifies, in part, design requirements for use in the construction of record storage facilities when the use of a single storage facility is desired. In approving the QAPD, the NRC also approved the single facility location used for the storage and maintenance of QA records at LACBWR.

Section XVII, "Quality Assurance Records," of the LACBWR QAPD states that the facility has established measures for maintaining ISFSI records that cover all documents and records associated with the operation, maintenance, installation, repair, and modification of SSCs covered by the QAPD. Also included are historical records gathered and collected during plant and ISFSI operations that are either required to support the dry cask storage systems stored at the ISFSI or ultimate shipment of the fuel to a federal repository. The QAPD also allows for QA records to be stored in accordance with ANSI N45 2.9–1974 in a single storage facility designed and maintained to minimize the risk of damage from adverse conditions. The licensee affirmed in its application that the record storage vault at LACBWR was constructed and is maintained to meet the requirements of the NRC-approved QAPD.

In addition, the licensee recognized in its application that the LACBWR site will continue to be under NRC regulation until license termination, primarily due to residual radioactivity. The operational, radiological, and other necessary programmatic controls (such as security and QA) for the facility, as well as the implementation of controls for the decommissioning activities, are and will continue to be appropriately addressed through the 10 CFR part 50 license and current decommissioning documents such as the DP/PSDAR and plant technical specifications.

- *The Exemption is Authorized by Law:* Under 10 CFR 50.12 and 10 CFR 72.7, the Commission may grant exemptions from the regulations in 10 CFR part 50 and 10 CFR part 72, as the Commission determines are authorized by law. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or the Commission's regulations. Therefore, the exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 72.72(d) is authorized by law.
- *The Exemption Presents no Undue Risk to Public Health and Safety and Will Not Endanger Life or Property:* Removal of the underlying SSCs associated with the records for which the licensee has requested an exemption from record keeping requirements has been or will be determined by the licensee to have no adverse public health and safety impact, in accordance with 10 CFR 50.59 or an NRC-approved license amendment. These change processes involve either a determination by the licensee or an approval from the NRC that the affected SSCs no longer serve any safety purpose regulated by the NRC. Elimination of records associated with these removed SSCs can have no impact to public health and safety.

The partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the records described above is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The exemption will only advance the schedule for disposition of the specified records. Considering the content of these records, the elimination of these records on an advanced timetable will have no reasonable potential of presenting any undue risk to the public health and safety.

The exemption from the portion of 10 CFR 72.72(d) that requires records for spent fuel in storage to be kept in duplicate for the LACBWR ISFSI continues to meet the record keeping requirements of 10 CFR part 50, appendix B, and other applicable 10 CFR part 72 requirements in that the spent fuel records will be stored and maintained in accordance with the NRC-approved QAPD. Specifically, 10 CFR 72.140(d) states that a QA program that is approved by the NRC as meeting the applicable requirements of appendix B to 10 CFR part 50, will be accepted as satisfying the requirements of 10 CFR 72.140(b) for establishment of an ISFSI QA program, except the licensee must also meet the record keeping provisions of 10 CFR 72.174. As noted above, the NRC previously reviewed the licensee's QA program and determined that it met the applicable requirements of appendix B to part 50. In addition, the exemption will not affect the record content, retrievability, or retention requirements specified in 10 CFR 72.72 or 10 CFR 72.174, such that the licensee will continue to meet all other applicable record requirements for the LACBWR ISFSI and associated special nuclear materials. The NRC staff determined that the process and procedures that will be used to store these records (*i.e.,* in accordance with the QAPD at a facility designed for protection against degradation mechanisms such as fire, humidity, and condensation) will help ensure that the required spent fuel information is adequately maintained. Therefore, the staff concludes that granting an exemption from the duplicate record requirement of 10 CFR 72.72(d) will not have an impact on public health and safety, and, in accordance with 10 CFR 72.7, will not endanger life or property.

- *The Exemption is Consistent with, and Will Not Endanger, the Common Defense and Security:* The elimination of the record keeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records. Therefore, the partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types of records described above is consistent with the common defense and security.

The exemption from 10 CFR 72.72(d) continues to meet the record keeping requirements of 10 CFR part 50, appendix B, and other applicable 10 CFR part 72 requirements in that the spent fuel records will be stored and maintained in accordance with the NRC-approved QAPD. In addition, the exemption will not affect the record content, retrievability, or retention requirements specified in 10 CFR 72.72 or 10 CFR 72.174, such that the licensee will continue to meet all other applicable record requirements for the LACBWR ISFSI and associated special nuclear materials. Therefore, the exemption will not endanger the common defense and security.

- *The Exemption is In the Public Interest:* Allowing the LACBWR ISFSI spent fuel records to be stored in the same manner as the spent fuel records for the LACBWR facility provides for greater efficiency in the storage of all of LACBWR's QA records now that the facility is entering the final stages of decommissioning whereby only the ISFSI facility will remain after license termination. Requiring a separate method for the storage of certain ISFSI QA records diverts resources from decommissioning activities at the LACBWR site. Therefore, the exemption from 10 CFR 72.72(d) is in the public interest since it will allow decommissioning at LACBWR to be accomplished more efficiently and effectively without the need to maintain two separate records storage systems.

- *Special Circumstances:* Paragraph 50.12(a)(2) states, in part: "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever: . . . (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. . . ."

Criterion 1 of 10 CFR part 50, Appendix A, states in part: "Appropriate records of the design, fabrication, erection, and testing of structures, systems, and components important to safety shall be maintained by or under the control of the nuclear power unit licensee throughout the life of the unit."

Criterion XVII of 10 CFR part 50, appendix B, states in part: "Sufficient records shall be maintained to furnish evidence of activities affecting quality."

Paragraph 50.59(d)(3) states in part: "The records of changes in the facility must be maintained until the termination of an operating license issued under this part. . . ."

Paragraph 50.71(c), states in part: "Records that are required by the regulations in this part or part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license. . . ."

In the statement of considerations (SOC) for the final rulemaking, "Retention Periods for Records" (53 FR 19240; May 27, 1988), in response to public comments received during the rulemaking process, the NRC stated that records must be retained "for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety." In the SOC, the Commission also explained that requiring licensees to maintain adequate records assists the NRC "in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident."

These regulations apply to licensees in decommissioning despite the fact that, during the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem which would adversely impact public health and safety.

The records subject to removal under this exemption are associated with SSCs that had been important to safety during power operation or operation of the SFP but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

In addition, once removed from the licensing basis documents, SSCs are no longer governed by the NRC's regulations, and therefore are not subject to compliance with the safety and health aspects of the nuclear environment. As such, retention of records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the requested exemption.

Records which continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to the regulations in 10 CFR part 50 and 10 CFR part 72. These retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, and quality assurance, as well as records associated with the ISFSI and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed above.

However, the cost effect of retaining operational phase records beyond the operations phase until the termination of the license was not fully considered or understood when the records retention rule was put in place. For example, existing records storage facilities are often eliminated as decommissioning progresses. Retaining records associated with SSCs and activities that no longer serve a safety or regulatory purpose would therefore necessitate creation of new facilities and retention of otherwise unneeded administrative support personnel. As such, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(iii), to grant the requested exemption.

- *Environmental Considerations:* Pursuant to 10 CFR 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC staff has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3); and 10 CFR 72.72(d) at the decommissioning La Crosse Boiling Water Reactor does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety (10 CFR 50.92(c)). Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (*i.e.,* potential amount of radiation involved an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves record keeping requirements, as well as reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC staff has determined that the requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 72.72(d) will not present an undue risk to the public health and safety, nor endanger life or property. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security.

The NRC staff has determined that the destruction of the identified records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States. In addition, the staff determined that the exemption is in the public interest because it will allow decommissioning at LACBWR to be accomplished more efficiently and effectively without the need to maintain redundant record retention systems, unneeded administrative personnel, and the associated costs.

The purpose for the record keeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility is understood, documented, preserved and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the LACBWR SSCs that were safety-related or important to safety have been or will be removed from the licensing basis and removed from the plant, the staff agrees that the records identified in the partial exemption will no longer be required to achieve the underlying purpose of the records retention rule.

The NRC previously approved the QAPD, including use of the single facility location for the storage and maintenance of QA records at LACBWR. This approach remains acceptable to satisfy the record keeping requirements of both 10 CFR part 50, appendix B, and 10 CFR part 72. Granting an exemption from the duplicate record keeping requirement in 10 CFR 72.72(d) will not affect the record content, retrievability, or retention requirements specified in 10 CFR 72.72 or 10 CFR 72.174, such that the licensee will continue to meet all other applicable record requirements for the LACBWR ISFSI and associated special nuclear materials.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12 and 10 CFR 72.7, the exemption is authorized by law, will not present an undue risk to the public health and safety, will not endanger life or property or the common defense and security, is consistent with the common defense and security, and is in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants the Dairyland Power Cooperative a one-time partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; 10 CFR 50.59(d)(3); and 10 CFR 72.72(d) for the La Crosse Boiling Water Reactor to advance the schedule to remove records associated with SSCs that have been removed from NRC licensing basis documents by appropriate change mechanisms.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of July 2016.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–17773 Filed 7–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0278]

Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revison 1 to Regulatory Guide (RG) 1.219, "Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors." This guidance has been updated to clarify how the guidance applies to emergency plan changes at facilities that have certified permanent cessation of operations.

DATES: Revision 1 to RG 1.219 is available on July 27, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0278 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0278 . Address questions about NRC dockets to Carol Gallagher; telephone: (301) 415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 to Regulatory Guide 1.219, and the regulatory analysis may be found in ADAMS under Accession No. ML16061A104 and ML15054A368 respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Stephen F. LaVie, Office of Nuclear Security and Incident Response, telephone: 301–287–3741, email: *Steve.LaVie@nrc.gov;* and Mark Orr, Office of Nuclear Regulatory Research, telephone: 301–415–6003, email: *Mark.Orr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 1 of RG 1.219 was issued with a temporary identification of Draft Regulatory Guide, DG–1324. This revision of the guide (Revision 1) addresses how the staff regulatory guidance applies to emergency plan changes at facilities that have certified permanent cessation of operation under § 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), "Termination of License," or § 52.110, "Termination of License," as applicable. The NRC identified the need for this clarification because of the inappropriate application of the § 50.54(q) change process at sites that had permanently ceased operations in 2013. In addition, the NRC made some clarifications and format changes that did not change the intent of the guidance.

II. Additional Information

The NRC published a notice of the availability of DG–1324 in the **Federal Register** on December 24, 2015 (80 FR 80396) for a 60-day public comment period. The public comment period closed on February 22, 2016. Public comments on DG–1324 and the NRC staff responses to the public comments are available in ADAMS under Accession No. ML16061A119.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Revision 1 of RG 1.219 describes methods that the staff of the NRC considers acceptable for nuclear power reactor licensees to change their emergency preparedness plans. Issuance of this RG does not constitute backfitting as defined in § 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of the RG, the NRC has no current intention to impose this RG on holders of current operating licenses or combined licenses. Moreover, explanations of the process by which a licensee makes changes to its emergency plan, provided in response to misinterpretations of the NRC's regulations by licensees, do not constitute modifications of or additions to systems, structures, components, or design of a facility; or the procedures or organization required to design, construct or operate a facility within the meaning of § 50.109(a)(1). Accordingly, the issuance of this regulatory guide does not constitute "backfitting" as defined in § 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

Regulatory Guide 1.219 may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final RG, as well as future applications for operating licenses and combined licenses submitted after the issuance of the RG. Such action would not constitute backfitting as defined in § 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52 because such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 21 day of July 2016.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–17696 Filed 7–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0016]

Information Collection: NRC Forms 366, 366A, and 366B, "Licensee Event Report"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Forms 366, 366A, and 366B, "Licensee Event Report."

DATES: Submit comments by September 26, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0016. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0016 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0016. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0016 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML16077A065. The supporting statement and NRC Forms 366, 366A, and 366B, "Licensee Event Report," are available in ADAMS under Accession No. ML16077A140.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV*.

B. Submitting Comments

Please include Docket ID NRC–2016–0016 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Forms 366, 366A, and 366B, "Licensee Event Report".
2. *OMB approval number:* 3150–0104.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Forms 366, 366A, and 366B.
5. *How often the collection is required or requested:* As needed per § 50.73 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licensee event report system." The total number of reports is estimated to be 350 per year.
6. *Who will be required or asked to respond:* The holder of an operating license under 10 CFR part 50 or a combined license under 10 CFR part 52 (after the Commission has made the finding under § 52.103(g)).
7. *The estimated number of annual responses:* The total number of reports is estimated to be 350 per year.
8. *The estimated number of annual respondents:* 100.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* The total estimated burden for completing Licensee Event Reports is 28,000 hours (based on 80 hours for each of 350 reports).
10. *Abstract:* Part of the NRC's function is to license and regulate the operation of commercial nuclear power plants to ensure protection of public health and safety and the environment in accordance with the Atomic Energy Act of 1954 (the Act) as amended. In order for the NRC to carry out these responsibilities, licensees must report significant events in accordance with § 50.73, so that the NRC can evaluate the events to determine what actions, if any,

are warranted to ensure protection of public health and safety or the environment. § 50.73 requires reporting on NRC Forms 366, 366A, and 366B.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 21st day of July 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–17678 Filed 7–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–206, 50–361, and 50–362; NRC–2016–0148]

Southern California Edison Company; San Onofre Nuclear Generating Station, Units 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption from several of the record keeping requirements in its regulations in response to an August 13, 2015, request from the Southern California Edison Company (the licensee). Specifically, the licensee requested that the San Onofre Nuclear Generating Station, Units 1, 2, and 3, be granted a partial exemption from regulations that require retention of records for certain systems, structures, and components until the termination of the operating license.

ADDRESSES: Please refer to Docket ID NRC–2016–0148 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marlayna Vaaler, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–3178; email: *Marlayna.Vaaler@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The San Onofre Nuclear Generating Station, Units 1, 2, and 3 (SONGS), operated by the Southern California Edison Company (SCE) is located approximately 4 miles south of San Clemente, California. SONGS, Unit 1, Docket No. 50–206, was a Westinghouse 456 megawatt electric (MWe) pressurized water reactor which was granted Facility Operating License No. DPR–13 on January 1, 1968 (ADAMS Accession No. ML13309A138), and ceased operation on November 30, 1992 (ADAMS Accession No. ML13319B040). The licensee completed defueling on March 6, 1993 (ADAMS Accession No. ML13319B055), and maintained the unit in SAFSTOR until June 1999, when it initiated decommissioning (ADAMS Accession No. ML13319B111). On December 28, 1993 (ADAMS Accession No. ML13319B059), the NRC approved the Permanently Defueled Technical Specifications for SONGS, Unit 1. SCE submitted the proposed Decommissioning Plan for SONGS, Unit 1, on November 3, 1994 (ADAMS Accession No. ML13319B073). As a result of the 1996 revision to the regulations in section 50.82 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC replaced the requirement for a decommissioning plan with a requirement for a Post Shutdown Decommissioning Activities Report (PSDAR). On August 28, 1996, the SONGS, Unit 1, Decommissioning Plan became the SONGS 1 PSDAR (61 FR 67079; December 19, 1996). On December 15, 1998 (ADAMS Accession No. ML13184A353), SCE submitted an update to the PSDAR to the NRC, as required by 10 CFR 50.82(a)(7), in order to begin planning for the dismantlement and decommissioning of SONGS, Unit 1.

SONGS, Units 2 and 3, Docket Nos. 50–361 and 50–362, are Combustion Engineering 1127 MWe pressurized water reactors, which were granted Facility Operating Licenses NPF–10 on February 16, 1982, and NPF–15 on November 15, 1982, respectively. In June 2013, pursuant to 10 CFR 50.82(a)(1)(i), the licensee certified to the NRC that as of June 12, 2013, operations had ceased at SONGS, Units 2 and 3 (ADAMS Accession No. ML131640201). The licensee later certified, pursuant to 10 CFR 50.82(a)(1)(ii), that all fuel had been removed from the reactor vessels of both units, and committed to maintaining the units in a permanently defueled status (ADAMS Accession Nos. ML13204A304 and ML13183A391 for Unit 2 and Unit 3, respectively). Therefore, pursuant to 10 CFR 50.82(a)(2), SCE's 10 CFR part 50 licenses do not authorize operation of SONGS or emplacement or retention of fuel into the reactor vessels.

The PSDAR for SONGS, Units 2 and 3, was submitted on September 23, 2014 (ADAMS Accession No. ML14272A121), and the associated public meeting was held on October 27, 2014, in Carlsbad, California (ADAMS Accession No. ML14352A063). The NRC confirmed its review of the SONGS, Units 2 and 3, PSDAR and addressed public comments in a letter dated August 20, 2015 (ADAMS Accession No. ML15204A383). On July 17, 2015, the NRC approved the Permanently Defueled Technical Specifications for SONGS, Units 2 and 3 (ADAMS Accession No. ML15139A390).

II. Request/Action

By letter dated August 13, 2015 (ADAMS Accession No. ML15231A107), SCE filed a request for NRC approval of an exemption from the record retention requirements of: (1) 10 CFR part 50, appendix A, Criterion 1, which requires certain records be retained throughout the life of the unit; (2) 10 CFR part 50, appendix B, Criterion XVII, which requires certain records be retained consistent with regulatory requirements for a duration established by the licensee; (3) 10 CFR 50.59(d)(3), which requires certain records be maintained until termination of a license issued pursuant to 10 CFR part 50; and (4) 10 CFR 50.71(c), which requires certain records be maintained consistent with various elements of the NRC regulations, facility technical specifications and other licensing bases documents.

The licensee is proposing to eliminate: (1) The records related to the nuclear power units and associated systems, structures, and components (SSCs), when the licensing basis requirements previously applicable to the nuclear power units and associated SSCs are no longer effective (*e.g.,* removed from the PSDAR, Defueled Safety Analysis Report, Updated Final Safety Analysis Report, and/or technical specifications by appropriate change mechanisms); and (2) the records related to SSCs associated with safe storage of the fuel in the spent fuel pool (SFP), when the spent nuclear fuel has been completely transferred from the SFP to dry storage, the spent fuel building is ready for demolition, and the associated licensing bases are no longer effective. The licensee cites record retention exemptions granted to Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260277), Millstone Power Station, Unit 1, (ADAMS Accession No. ML070110567), and Haddam Neck Plant (ADAMS Accession No. ML052160088), as precedents for the NRC granting SCE's request.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the exemption request because they will be retained as decommissioning records until the termination of the SONGS license. In addition, the licensee did not request an exemption associated with any other record keeping requirements for the storage of spent fuel at its Independent Spent Fuel Storage Installation (ISFSI) under 10 CFR part 50 or the general license requirements of 10 CFR part 72. No exemption was requested from the decommissioning records retention requirements of 10 CFR 50.75, or any other requirements of 10 CFR part 50 applicable to decommissioning and dismantlement.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in 10 CFR 50.12(a)(2).

As described in the PSDAR, SONGS, Unit 1, is being returned to a condition suitable for unrestricted use. According to the August 13, 2015, submittal, there are no SSCs classified as safety-related remaining at SONGS, Unit 1. Plant dismantlement is complete and nearly all of the SSCs have been shipped offsite for disposal. Only the spent fuel, reactor vessel, and the below-grade portions of some buildings remain onsite. The principal remaining decommissioning activities are soil remediation, compaction, and grading. This is to be completed in conjunction with the future decommissioning of the ISFSI subsequent to shipment offsite of the SONGS stored spent fuel.

The August 13, 2015, submittal also stated that decommissioning of SONGS, Units 2 and 3, has begun and the nuclear reactor and essentially all associated SSCs in the nuclear steam supply system and balance of plant that supported the generation of power have been retired in place and are being prepared for removal. The SSCs that remain operable are associated with the SFP and the spent fuel building, are needed to meet other regulatory requirements, or are needed to support other site facilities (*e.g.,* radioactive waste handling, ventilation and air conditioning, etc.). No remaining SSCs are classified as safety-related.

The licensee's general justification for eliminating records associated with SONGS, Units 1, 2, and 3, SSCs that have been or will be removed from service under the NRC license, dismantled, or demolished, is that these SSCs will not in the future serve any SONGS, Units 1, 2, or 3 functions regulated by the NRC. SCE's dismantlement plans involve evaluating SSCs with respect to the current facility safety analysis; progressively removing them from the licensing basis where necessary through appropriate change mechanisms (*e.g.,* 10 CFR 50.59 or via NRC-approved technical specification changes, as applicable); revising the Defueled Safety Analysis Report and/or Updated Safety Analysis Report as necessary; and then proceeding with an orderly dismantlement. Dismantlement of the plant structures will also include dismantling existing records storage facilities.

While SCE intends to retain the records required by its licenses as the project transitions from current plant conditions to a fully dismantled plant with the fuel in dry storage, plant dismantlement will obviate the regulatory and business need for maintenance of most records. As the SSCs are removed from the licensing basis and the need for the associated records is, on a practical basis, eliminated, the licensee proposes that they be exempted from the records retention requirements for SSCs and historical activities that are no longer relevant, thereby eliminating the associated regulatory and economic burdens of creating alternative storage locations, relocating records, and retaining irrelevant records.

The exemption request states that all records necessary for spent fuel and spent fuel storage SSCs and activities have been, and will continue to be, retained for the SFP throughout its functional life. Similar to other plant records, once the SFP is emptied of fuel, drained and ready for demolition, there will be no safety-significant function or other regulatory need for retaining SFP related records. In addition, SCE recognized in its application that the SONGS site will continue to be under NRC regulation until license termination, primarily due to residual radioactivity. The operational, radiological, and other necessary programmatic controls (such as security and quality assurance) for the facility, as well as the implementation of controls for the defueled condition and decommissioning activities, will continue to be appropriately addressed through the 10 CFR part 50 licenses and current decommissioning plan documents such as the PSDAR, Updated Final Safety Analysis Report, and plant technical specifications.

- *The Exemption is Authorized by Law:* The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or the Commission's regulations. Therefore, the exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.
- *The Exemption Presents no Undue Risk to Public Health and Safety:* Removal of the underlying SSCs

associated with the records for which SCE has requested an exemption from record keeping requirements has been or will be determined by the licensee to have no adverse public health and safety impact, in accordance with 10 CFR 50.59 or an NRC-approved license amendment. These change processes involve either a determination by the licensee or an approval from the NRC that the affected SSCs no longer serve any safety purpose regulated by the NRC. Elimination of records associated with these removed SSCs can have no impact to public health and safety.

The partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the records described above is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The exemption will only advance the schedule for disposition of the specified records. Considering the content of these records, the elimination of these records on an advanced timetable will have no reasonable possibility of presenting any undue risk to the public health and safety.

- *The Exemption is Consistent With the Common Defense and Security:* The elimination of the record keeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records. Therefore, the partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types of records described above is consistent with the common defense and security.

- *Special Circumstances:* Paragraph 50.12(a)(2) states, in part: "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever: . . . (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted . . . ."

Criterion 1 of 10 CFR part 50, Appendix A, states in part: "Appropriate records of the design, fabrication, erection, and testing of structures, systems, and components important to safety shall be maintained by or under the control of the nuclear power unit licensee throughout the life of the unit."

Criterion XVII of 10 CFR part 50, Appendix B, states in part: "Sufficient records shall be maintained to furnish evidence of activities affecting quality."

Paragraph 50.59(d)(3) states in part: "The records of changes in the facility must be maintained until the termination of an operating license issued under this part. . . ." Paragraph 50.71(c), states in part: "Records that are required by the regulations in this part or Part 52 of this chapter, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license. . . ."

In the Statement of Considerations (SOC) for the final rulemaking, "Retention Periods for Records" (53 FR 19240; May 27, 1988), in response to public comments received during the rulemaking process, the NRC stated that records must be retained "for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety." In the SOC, the Commission also explained that requiring licensees to maintain adequate records assists the NRC "in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident."

These regulations apply to licensees in decommissioning despite the fact that, during the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms. Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem which would adversely impact public health and safety.

The records subject to removal under this exemption are associated with SSCs that had been important to safety during power operation or operation of the SFP but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, as evidenced by their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then it is reasonable to conclude that the records associated with these SSCs would not reasonably be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

In addition, once removed from the licensing basis documents, SSCs are no longer governed by the NRC's regulations, and therefore are not subject to compliance with the safety and health aspects of the nuclear environment. As such, retention of records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the requested exemption.

Records which continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to the regulations in 10 CFR part 50 and 10 CFR part 72. These retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, security, and quality assurance, as well as records associated with the ISFSI and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee.

Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed above.

However, the cost effect of retaining operational phase records beyond the operations phase until the termination of the license was not fully considered or understood when the records retention rule was put in place. For example, existing records storage facilities are often eliminated as decommissioning progresses. Retaining records associated with SSCs and activities that no longer serve a safety or regulatory purpose would therefore necessitate creation of new facilities and retention of otherwise unneeded administrative support personnel. As such, compliance with the rule would result in an undue cost in excess of that contemplated when the rule was adopted. Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(iii), to grant the requested exemption.

- *Environmental Considerations:* Pursuant to 10 CFR 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC staff has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at the decommissioning San Onofre Nuclear Generating Station, Units 1, 2, and 3 does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety (10 CFR 50.92(c)). Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (*i.e.,* potential amount of radiation involved an accident) or accident mitigation; therefore, there is no significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves record keeping requirements, as well as reporting requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and 10 CFR 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC staff has determined that the requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; operational and/or installed SSCs that are quality-related or important to safety; or nuclear security. The NRC staff has determined that the destruction of the identified records is administrative in nature and does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the record keeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility is understood, documented, preserved and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the SONGS SSCs that were safety-related or important to safety have been or will be removed from the licensing basis and removed from the plant, the staff agrees that the records identified in the partial exemption will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Southern California Edison Company a one-time partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix A, Criterion I; 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the San Onofre Nuclear Generating Station, Units 1, 2, and 3 to advance the schedule to remove records associated with SSCs that have been removed from NRC licensing basis documents by appropriate change mechanisms.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of July 2016.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–17772 Filed 7–26–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2015–96; CP2015–98; MC2016–169 and CP2016–247; MC2016–170 and CP2016–248; MC2016–171 and CP2016–249]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 29, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2015–96; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 131, with Portions Filed Under Seal; *Filing Acceptance Date:* July 21, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* July 29, 2016.

2. *Docket No(s).:* CP2015–98; *Filing Title:* Notice of United States Postal Service of Amendment to Priority Mail Contract 133, with Portions Filed Under Seal; *Filing Acceptance Date:* July 21, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* July 29, 2016.

3. *Docket No(s).:* MC2016–169 and CP2016–247; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express Contract 40 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 21, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* July 29, 2016.

4. *Docket No(s).:* MC2016–170 and CP2016–248; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 58 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 21, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* July 29, 2016.

5. *Docket No(s).:* MC2016–171 and CP2016–249; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 59 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* July 21, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* July 29, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–17776 Filed 7–26–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 21, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 59 to Competitive Product List*. Documents are available at *www.prc.gov,* Docket Nos. MC2016–171, CP2016–249.

Stanley F. Mires,
Attorney, Federal Compliance.

[FR Doc. 2016–17703 Filed 7–26–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 21, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 58 to Competitive Product List*. Documents are available at *www.prc.gov,* Docket Nos. MC2016–170, CP2016–248.

Stanley F. Mires,
Attorney, Federal Compliance.

[FR Doc. 2016–17705 Filed 7–26–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78384; File No. SR–Nasdaq–2016–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III

July 21, 2016.

On January 6, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the First Trust Municipal High Income ETF ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on January 27, 2016.[3] On February 16, 2016, the Exchange filed Amendment No. 1.[4] On March 8, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On April 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.[8] In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.[9] On June 24, 2016, the Exchange filed Amendment No. 2, which replaced the originally filed proposed rule change in its entirety.[10] The Commission has not received any comments on the proposed rule change.

Section 19(b)(2) of the Act[11] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2016.[12] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is July 25, 2016.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[13] designates September 23, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto (File No. SR–Nasdaq–2016–002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17670 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76944 (Jan. 21, 2016), 81 FR 4712 ("Notice").

[4] Amendment No. 1 is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 34–77320, 81 FR 13429 (Mar. 14, 2016). The Commission designated April 26, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 77871, 81 FR 26265 (May 2, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." *See id.*, 81 FR at 26268.

[9] *See id.*

[10] Amendment No. 2 is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-2.pdf.*

[11] 15 U.S.C. 78s(b)(2).

[12] *See supra* note 3.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78381; File No. SR–NYSEArca–2016–103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rules 2.17(c) and 2.23(i) To Harmonize the Requirement of When OTP Holders and OTP Firms Must File a Uniform Termination Notice for Securities Industry Registration With the Rules of Other Exchanges and FINRA

July 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 14, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 2.17(c) and 2.23(i) to harmonize the requirement of when OTP Holders and OTP Firms must file an [sic] Uniform Termination Notice for Securities Industry Registration ("Form U–5") with the rules of other exchanges and FINRA. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 2.17 and 2.23 to harmonize the requirement of when OTP Holders and OTP Firms must file a Form U–5 with the requirements on [sic] other exchanges and the Financial Industry Regulatory Authority ("FINRA"). This filing is not intended to address any other registration requirements in Exchange rules.

Specifically, under current Rule 2.17(c), an OTP Holder that terminates an OTP is required to file a Form U–5 or any amendment thereto within ten (10) business days of the termination or the occurrence requiring the amendment. Under current Rule 2.23(i), OTP Holders and OTP Firms are required to file a Form U–5 and any amendment thereto within ten (10) business days of the termination date of an employee that has been approved for admission to the trading floor or participation on any trading system. While each of these rules govern the same topic, they do not use the same rule language.

The Exchange proposes to amend these two rules by replacing the current requirements of when to electronically file a Form U–5 with the same requirement in each rule that an OTP Holder or OTP Firm (as applicable) promptly file a Form U–5 electronically with the Central Registration Depository ("CRD"), but not later than 30 calendar days after the date of termination of an OTP or employee (as applicable). The proposed rule would further require that any amendment to a Form U–5 must also be promptly filed electronically with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule would provide that all Forms U–5 must also be provided to the terminated person concurrently with filing.

The proposed rule text is based on the requirements of other exchanges and FINRA and therefore would harmonize the requirement of when OTP Holders or OTP Firms must file a Form U–5 with the rules of other exchanges and FINRA.[4] The Exchange believes that the proposed rule changes will promote the protection of investors by adding that a Form U–5 be filed promptly, rather than the current requirement that a Form U–5 be filed within 10 days. The Exchange believes that this proposed requirement may lead to Form U–5s being filed sooner than the current 10-day requirement. Consistent with the rules of other exchanges and FINRA, the rule would further provide that a Form U–5 should be filed not later than 30 days after the date of termination. While this date is longer than the current 10 day requirement, the Exchange believes that this timing, combined with the requirement to file promptly, may still lead to firms submitting Form U–5s on a more prompt basis. In addition, the proposed rule would harmonize the standard, thus reducing the burden on competition for OTP Holders and OTP Firms that are members of multiple exchanges and FINRA to meet similar requirements. Such conformance to the prevalent standard would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act,[5] in general, and furthers [sic] the objectives of Section 6(b)(5),[6] in particular, in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule changes would remove impediments to and perfect the mechanisms of a free and open market by conforming the time period within which OTP Holders and OTP Firms must file a Form U–5 to the requirement that such forms be filed promptly, but not later than 30 days after the termination event. The Exchange believes that the proposed rule changes would protect investors and the public interest by adding that Form U–5s should be filed promptly, rather than requiring only that they be filed within 10 days. In addition, the Exchange believes that adding the requirement that a Form U–5 be filed not later than 30 days after the event would eliminate the disparity among the exchanges, other SROs and the affected persons stemming from the cessation of their employment. In this regard, the proposed changes would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as they would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence. Such action would not affect nor diminish the abilities of the Exchange, OTP Holders or OTP Firms to fulfill their regulatory responsibilities under the Act or the rules promulgated thereunder, including but not limited to the responsibilities to monitor the activities of such persons, nor would such proposed amendment affect the rights of such terminated persons.

The Exchange believes this additional transparency and clarity removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest by harmonizing the time period for filing the requisite Form U–5 across multiple SROs, and by imposing the requirement that such form be filed promptly.[8]

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[4] *See* New York Stock Exchange LLC ("NYSE") Rule 345(a).17(a) and (b) (requiring that a Form U–5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U–5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided concurrently to the person whose association has been terminated); BATS BZX Exchange, Inc. ("BZX") Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U–5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U–5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment should be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U–5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] This filing is intended to address only the filing requirements of Forms U–5; it is not intended to address or affect any other mandatory filing requirements or procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that these proposed rule changes would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather to harmonize Exchange time-filing requirements to a standard prevalent among other exchanges and FINRA, thereby reducing any potential confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule changes would serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–103 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17667 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78380; File No. SR–NASDAQ–2016–090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliated Entities

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NASDAQ Options Market LLC's ("NOM") pricing at Chapter XV to permit certain affiliated market participants to aggregate eligible volume for pricing in Chapter XV, Sections 2(1) and 2(6), for which a volume threshold or volume percentage is required to obtain the pricing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit certain affiliated market participants to aggregate volume in Chapter XV, Sections 2(1) and 2(6), for which a volume threshold or volume percentage is required to qualify for various pricing incentives. The Exchange's proposal is intended to incentivize Participants to submit for execution a greater amount of order flow on NOM to obtain more advantageous pricing.

Affiliated Entity

The Exchange proposes to add three definitions to Chapter XV of NOM

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rules. The Exchange proposes to define the terms "Appointed MM," "Appointed OFP," and "Affiliated Entity."

The Exchange proposes to define the term "Appointed MM" as a NOM Market Maker[3] who has been appointed by an Order Flow Provider ("OFP") for purposes of qualifying as an Affiliated Entity. An OFP is a Participant, other than a NOM Market Maker, that submits orders, as agent or principal, to the Exchange.[4]

The Exchange proposes to define the term "Appointed OFP" as an OFP who has been appointed by a NOM Market Maker for purposes of qualifying as an Affiliated Entity.

The Exchange proposes to define the term "Affiliated Entity" as a relationship between an Appointed MM and an Appointed OFP for purposes of aggregating eligible volume for pricing in Chapter XV, Sections 2(1) and 2(6), for which a volume threshold or volume percentage is required to qualify for higher rebates or lower fees.

In order to become an Affiliated Entity, NOM Market Makers and OFPs will be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.[5] For example, with this proposal, market participants may submit emails to the Exchange to become Affiliated Entities eligible to qualify for discounted pricing starting August 1, 2016, provided the emails are sent at least 3 business days prior to the first business day of August 2016. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing in Chapter XV, Section 2(1) and (6).

Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. For example, if the start date of the Affiliated Entity relationship is August 1, 2016, the counterparties may determine to commence a new relationship as of August 1, 2017 by sending two new emails by July 27, 2017 (3 business days prior to the end of the month). Participants under Common Ownership[6] may not qualify as a counterparty comprising an Affiliated Entity. Each Participant may qualify for only one (1) Affiliated Entity relationship at any given time.

As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing in Chapter XV, Sections 2(1) and 2(6) for which a volume threshold or volume percentage is required to obtain a higher rebate or lower fee. With this proposal, Affiliated Entities will be eligible to aggregate pricing in Chapter XV, Section 2(1) in both Penny and Non-Penny Pilot Options[7] and also aggregate MARS Payments in Chapter XV, Section 2(6).

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

Currently, the Exchange offers Customers,[8] Professionals[9] and NOM Market Makers the ability to obtain higher Penny Pilot Options Rebates to Add Liquidity with tiered pricing models.[10] The Exchange offers additional volume incentives to Customers and Professionals in note 1 of Chapter XV, Section 2(1) to increase the Non-Penny Pilot Options Rebate to Add Liquidity, provided certain qualifications are met.[11] The Exchange also offers NOM Market Makers the ability to obtain higher Penny Pilot Options Rebates to Add Liquidity.[12] Additionally, the Exchange also offers additional volume incentives to NOM Market Makers in note 2 of Chapter XV, Section 2(1) to lower the Penny Pilot Options Fee for Removing Liquidity.[13] Note "c" of Chapter XV, Section 2(1)[14]

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[3] The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[4] Market Makers submitting quotes through SQF or orders through OTTO to the Exchange shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

[5] The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity. Once the Exchange receives both emails, from the Affiliated [sic] MM and the Affiliated [sic] OFP, the Exchange will send a confirming email with the date of approval of the one (1) year term.

[6] The term "Common Ownership" means Participants under 75% common ownership or control. *See* Chapter XV. Participants that are under 75% common ownership or control shall be considered under Common Ownership for purposes of pricing.

[7] *See* NOM Rules at Section 2(1) of Chapter XV.

[8] The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

[9] The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[10] For Customers and Professionals, there are currently 8 Penny Pilot Options Rebate to Add Liquidity Tiers for Customers and Professionals with rebates that range from $0.20 to $0.48 per contract. Additionally, notes c and d in Chapter XV, Section 2(1) permit additional incentives based on volume in the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. For NOM Market Makers, there are currently 6 Penny Pilot Options Rebate to Add Liquidity Tiers with rebates ranging from $0.20 to $0.42 per contract.

[11] Note 1 of Chapter XV, Section 2(1) states that a Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month will receive an additional $0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month will receive an additional $0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

[12] There are currently 6 Penny Pilot Options Rebate to Add Liquidity Tiers for NOM Market Makers with rebates that range from $0.20 to $0.42 per contract.

[13] Note 2 of Chapter XV, Section 2(1) states that Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: A $0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for the NASDAQ Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: a $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: a $0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership

[14] Note "c" of Chapter XV, Section 2(1) provides, "Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add

Continued

offers Participants an opportunity to increase the Tier 8 Customer and Professional Penny Pilot Options rebate, provided certain qualifications are met. This pricing is reflected at Chapter XV, Section 2(1) and would be subject to aggregation by Affiliated Entities.

The Exchange's proposal would incentivize certain Participants, who are not by definition under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating volume to qualify for higher rebates and lower fees. With this proposal the Exchange is offering Affiliated [sic] OFPs the ability to obtain higher rebates and is also offering Appointed MMs the ability to obtain lower fees by aggregating volume at Chapter XV, Section 2(1).

Chapter XV, Section 2(6)—MARS Pricing

The Exchange currently offers a Market Access and Routing Subsidy or "MARS" to qualifying NOM Participants in Chapter XV, Section 2(6).[15] NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid rebates based on average daily volume in a month. There is a 3 tiered rebate schedule today for such MARS rebates.[16] MARS Payments are made to NOM Participants that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on NOM, for the purpose of qualifying for the MARS Payment.[17]

In note "d" of Chapter XV, Section 2(1), the Exchange also offers NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 an additional $0.03 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers 1 through 8. NOM Participants that qualify for a note "c" incentive receive the greater of the note "c" or note "d" incentive.[18]

The Exchange's proposal would incentivize certain Participants, who are not by definition under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating volume to qualify for higher MARS rebates. With this proposal the Exchange is offering Affiliated [sic] OFPs the ability to obtain higher MARS rebates by aggregating volume with an Affiliated [sic] MM with whom they are qualified as an Affiliated Entity and also be able to aggregate volume for purposes of qualifying for the Chapter XV, Section 2(1) note "d" rebate.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [21]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [22] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[23] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost." [24]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in

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Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity."

[15] The Participant remains solely responsible for implementing and operating its System, as that term is defined in note 17 below.

[16] NOM Participants that qualify for Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 are eligible to receive $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month. Also, note 4 of Chapter XV, Section 2(1) permits NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3 to receive a Customer and Professional Penny Pilot Options Fee for Removing Liquidity of $0.48 per contract when removing Customer and Professional liquidity in Penny Pilot Options, excluding SPY.

[17] To qualify for MARS, the NOM Participant's routing system ("System") would be required to meet the following criteria: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Also, the Participant's System would also need to cause NOM to be the one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override NOM as a default destination on an order-by-order basis ("System Eligibility"). Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality meets the requirements described herein and satisfies NOM that it appears to be robust and reliable. Eligible Contracts do not include Mini Option orders. A NOM Participant is not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to NOM.

[18] *See* note 14 above.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4), (5).

[21] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7–10–04) ("Regulation NMS Adopting Release").

[22] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[23] *See id.* at 534–535.

[24] *See id.* at 537.

the execution of order flow from broker dealers' . . . ."[25] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to amend Chapter XV to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is reasonable because the Exchange is proposing to identify the applicable market participants that may qualify to aggregate volume as an Affiliated Entity. Further the Exchange seeks to make clear the manner in which Participants may participate on the Exchange as Affiliated Entities by setting timeframes for communicating agreements among market participants and terms of early termination. The Exchange also clearly states that no Participant under Common Ownership may become a counterparty to an Affiliated Entity. Any Participant who meets the definition of Common Ownership shall not be eligible to become an Affiliated Entity. The Exchange believes that these terms are reasonable because they would allow Participants to elect to become a counterparty to an Affiliated Entity, provided they are not under Common Ownership.

The Exchange's proposal to amend Chapter XV to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is equitable and not unreasonably discriminatory because all Participants that are not under Common Ownership by definition may choose to enter into an Affiliated Entity relationship.

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

The Exchange's proposal to permit Affiliated Entities to aggregate volume for purposes of qualifying Appointed OFPs for higher Penny Pilot and Non-Penny Pilot Options rebates and qualifying Appointed MMs for lower fees in Chapter XV, Section 2(1) and the note "c" incentive is reasonable because it will attract additional Customer and non-Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts NOM Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Also, the Exchange is incentivizing Participants to send non-Customer order flow to NOM, which order flow will benefit all Participants because they may interact with the liquidity. Market participants directing order flow as OFPs may be eligible to qualify for higher rebates with this proposal as a result of aggregating volume with an Appointed MM and thereby qualifying for higher rebates. Permitting Participants to affiliate for purposes of qualifying Appointed OFPs for higher rebates and qualifying Appointed MMs for lower fees may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more volume on NOM. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads on orders. Overall, incentivizing market participants with increased opportunities to earn higher or lower fees may increase the quality of the liquidity available on NOM.

The Exchange's proposal to permit Affiliated Entities to aggregate volume for purposes of qualifying Appointed OFPs for higher Penny Pilot and Non-Penny Pilot Options rebates and qualifying Appointed MMs for lower fees in Chapter XV, Section 2(1) and the note "c" incentive is equitable and not unfairly discriminatory because all NOM Participants, other than those that meet the definition of Common Ownership, may elect to become an Affiliated Entity as either an Appointed MM or an Appointed OFP.[26] Also, each NOM Participant may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed volume on NOM to receive a corresponding benefit in terms of a higher rebate or lower fee. Any market participant that by definition is not under Common Ownership may elect to become a counterparty of an Affiliated Entity. Also, NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. NOM Market Makers are subject to burdensome quoting obligations[27] to the market that do not apply to other market participants. Incentivizing these market participants to execute volume on NOM may result in tighter spreads.

The Exchange's proposal to exclude Participants that are under Common Ownership from qualifying as an Affiliated Entity is reasonable because Participants under Common Ownership may aggregate volume today for purposes of Chapter XV, Section 2(1) pricing.[28] The Exchange's proposal to exclude Participants that by definition are under Common Ownership from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Excluding Participants under Common Ownership from also qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because they are able to aggregate volume today and qualify for higher rebates or lower fees.

Chapter XV, Section 2(6)—MARS Pricing

The Exchange's proposal to permit NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves, and meet certain System Eligibility, to aggregate volume as an Affiliated Entity for purposes of receiving MARS Payments including the note "d" incentive is reasonable because NOM Participants will be incentivized to send more order flow to NOM. MARS Payments are made on Firm, Non-NOM Market Maker, Broker-Dealer and JBO equity option orders that add liquidity and are electronically delivered and executed. All Participants may benefit from the increased order flow because they may interact with this liquidity. Permitting NOM Participants to affiliate for purposes of qualifying Appointed OFPs for higher MARS rebates may also encourage Affiliated Entities to incentivize each other to attract and seek to execute more volume on NOM. The Affiliated Entity relationship would permit the Appointed OFP to benefit from orders executed on NOM in terms of qualifying for higher MARS rebates. In turn, market participants would benefit from the increased liquidity with which to interact, potentially tighter spreads on orders.

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[25] *See id.* at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

[26] Both Participants must elect each other to qualify as an Affiliated Entity for one year. Participation is effected by an agreement of both parties. One party may elect terminate the agreement at any time.

[27] Pursuant to NOM Rules at Chapter VII, Section 5, entitled "Obligations of Market Makers", in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a NOM Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 2.

[28] *See* NOM Rules at Chapter XV for Common Ownership.

The Exchange's proposal to permit NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves, and meet certain System Eligibility, to aggregate volume as an Affiliated Entity for purposes of receiving MARS Payments including the note "d" incentive is equitable and not unfairly discriminatory because all NOM Participants, other than those that meet the definition of Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, all NOM Participants may qualify for a MARS Payment provided they meet applicable System Eligibility requirements. NOM Participants may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed volume on NOM to receive a corresponding benefit in terms of a rebate. The Exchange will apply all qualifications in a uniform manner to all market participants that elect to become counterparties of an Affiliated Entity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that permitting Affiliated Entities to aggregate volume to qualify for certain rebates and reduced fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of inter-market competition, the Exchange notes that other options markets have similar incentives in place to attract volume to their markets.[29]

The Exchange's proposal to amend Chapter XV to add the definitions of "Appointed MM," "Appointed OFP," and "Affiliated Entity" does not impose an undue burden on competition because these definitions apply to all Participants uniformly.

Chapter XV, Section 2(1)—Penny Pilot and Non-Penny Pilot Options Pricing

In terms of intra-market competition, the Exchange does not believe that its proposal to permit counterparties of an Affiliated Entities to aggregate volume for purposes of qualifying for Chapter XV, Section 2(1) higher rebates and lower fees and the note "c" incentive imposes an undue burden on intra-market competition because all NOM Participants, other than those under Common Ownership, may qualify as an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, each NOM Participant may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed NOM volume on NOM to receive a corresponding benefit in terms of a higher rebate or lower fee. The Exchange will apply all qualifications in a uniform manner to all market participants that elect to become counterparties of an Affiliated Entity. Any market participant that by definition is a Participant under Common Ownership may not become a counterparty of an Affiliated Entity.

Also, NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. NOM Market Makers are subject to burdensome quoting obligations[30] to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer and Professional volume on NOM may result in tighter spreads. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Appointed OFPs directing order flow to the Exchange may be eligible to qualify for a higher rebate and Appointed MMs may be eligible to qualify for lower fees, with this proposal, as a result of aggregating volume. Permitting Participants to affiliate for purposes of qualifying for Chapter XV, Section 2(1) higher rebates or lower fees may also encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more volume on NOM.

The Exchange's proposal to exclude Participants that are under Common Ownership from becoming an Affiliated Entity does not impose and [sic] undue burden on intra-market competition because Participants under Common Ownership may aggregate volume today for purposes of qualifying for higher rebates or lower fees.

Chapter XV, Section 2(6) –MARS Pricing

In terms of intra-market competition, the Exchange does not believe that its proposal to permit Affiliated Entities to aggregate volume for purposes of qualifying for Chapter XV, Section 2(6) MARS rebates and the note "d" incentive imposes an undue burden on intra-market competition because all NOM Participants, other than those under Common Ownership, may qualify as an Affiliated Entity as either an

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[29] *See* NYSE MKT LLC's ("NYSE Amex") pricing at NYSE Amex Options Fee Schedule). NYSE Amex permits aggregation of volume to qualify for the Amex Customer Engagement or ACE Program. *See* Bats BZX Exchange, Inc.'s ("BZX") fee schedule. BZX permits aggregation of volume to qualify for tiered pricing. *See* the Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule. CBOE permits aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP."

[30] *See* note 27 above.

Appointed MM or an Appointed OFP. Also, all NOM Participants may qualify for a MARS Payment provided they meet applicable System Eligibility requirements. NOM Participants may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed volume on NOM to receive a corresponding benefit in terms of a rebate. The Exchange will apply all qualifications in a uniform manner to all market participants that elect to become counterparties of an Affiliated Entity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–090 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–090. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–090 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17666 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78382; File No. SR–Phlx–2016–62]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliated Entities

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Preface, Section B and Section II of the Exchange's Pricing Schedule to permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit certain affiliated market participants to aggregate volume and qualify for various pricing incentives in the Pricing Schedule. Specifically, the Exchange proposes to amend the Pricing Schedule at Section B, Customer[3] Rebates and at Section II, Multiply-Listed Options Fees,[4] to offer

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[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

[4] These fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

Affiliated Entities certain rebate and fee incentives.

Affiliated Entity

The Exchange proposes to add three definitions to the Preface of the Pricing Schedule. The Exchange proposes to define the terms "Appointed MM," "Appointed OFP," and "Affiliated Entity." The Exchange proposes to define the term "Appointed MM" as a Phlx Market Maker[5] or Specialist[6] who has been appointed by an Order Flow Provider ("OFP") for purposes of qualifying as an Affiliated Entity. An OFP is a member or member organization that submits orders, as agent or principal, to the Exchange.[7] The Exchange proposes to define the term "Appointed OFP" as an OFP who has been appointed by a Phlx Market Maker or Specialist for purposes of qualifying as an Affiliated Entity. The Exchange proposes to define the term "Affiliated Entity" as a relationship between an Appointed MM and an Appointed OFP for purposes of qualifying for certain pricing as specified in the Pricing Schedule. In order to become an Affiliated Entity, Market Makers or Specialists, and OFPs will be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.[8] For example, with this proposal, market participants may submit emails to the Exchange to become Affiliated Entities eligible to qualify for discounted pricing starting August 1, 2016, provided the emails are sent at least 3 business days prior to the first business day of August 2016. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity would be eligible to qualify for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. For example, if the start date of the Affiliated Entity relationship is August 1, 2016, the counterparties may determine to commence a new relationship as of August 1, 2017 by sending two new emails by July 27, 2017 (3 business days prior to the end of the month). Members and member organizations under Common Ownership[9] may not qualify as a counterparty comprising an Affiliated Entity. Each member or member organization may qualify for only one (1) Affiliated Entity relationship at any given time.

As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

Section B—Customer Rebates

The Exchange proposes to amend Section B, entitled "Customer Rebate Program" to permit Affiliated Entities to aggregate their Customer volume for purposes of calculating Customer Rebate Tiers and receiving rebates. Currently, the Exchange has a Customer Rebate Program consisting of the following five tiers that pay Customer rebates on three Categories, A, B and C, of transactions:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF Options classes, excluding SPY Options (monthly)	Category A	Category B	Category C
Tier 1	0.00%–0.60%	$0.00	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	$0.10	$0.10	$0.17
Tier 3	Above 1.10%–1.60%	$0.15	$0.12	$0.17
Tier 4	Above 1.60%–2.50%	$0.20	$0.16	$0.22
Tier 5	Above 2.50%	$0.21	$0.17	$0.22

A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross ("QCC") Orders, as defined in Exchange Rule 1080(o).[10] The Exchange proposes to incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for Section B Customer Rebates. By aggregating volume, the counterparties comprising the Affiliated Entity are offered an opportunity to qualify for higher rebates, thereby lowering costs and encouraging members to send more order flow. Customer liquidity benefits all market participants by providing more order flow to the marketplace and more trading opportunities.

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[5] The term "Market Maker" will be utilized to describe fees and rebates applicable to Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs"), Remote Streaming Quote Traders ("RSQTs"). An ROT is defined in Exchange Rule 1014(b) is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers ("RMMs").

[6] The term "Specialist" shall apply to the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 501(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[7] Specialist and Market Makers submitting quotes to the Exchange shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

[8] The Exchange shall issue an Options Trader Alert specifying the email address and details required to apply to become an Affiliated Entity.

[9] The term "Common Ownership" shall mean members or member organizations under 75% common ownership or control. Phlx members or member organizations that are under 75% common ownership or control shall be considered under Common Ownership for purposes of pricing.

[10] In calculating electronically-delivered and executed Customer volume in Multiply Listed Options, the numerator of the equation includes all electronically-delivered and executed Customer volume in Multiply Listed Options. The denominator of that equation includes national customer volume in multiply-listed equity and ETF options volume, excluding SPY. *See* Section B of the Pricing Schedule.

Affiliated Entities may aggregate Customer volume as between the Appointed MM and Appointed OFP to qualify for any of the five tiers of Customer Rebates that pay Category, A, B or C rebates on transactions. An Appointed OFP would be eligible to receive the additional $0.02 per contract Category A and B rebate and the additional $0.03 per contract Category C rebate, paid in addition to the applicable Tier 2 and 3 rebate, currently available to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership, provided the Appointed MM has reached the Monthly Market Maker Cap, as defined in Section II.

The Exchange proposes to amend the language in Section B to clarify the applicability of the $0.02 per contract rebate in addition to Categories A and B and the $0.03 per contract rebate in addition to Category C, applicable to Tiers 2 and 3. The Exchange proposes to relocate certain language and add language to amend the sentence as follows: "The Exchange will pay a $0.02 per contract Category A and B rebate and a $0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate, provided the Specialist, Market Maker or Appointed MM has reached the Monthly Market Maker Cap as defined in Section II, to: (1) A Specialist or Market Maker who is not under Common Ownership or is not a party of an Affiliated Entity; or (2) an OFP member or member organization affiliate under Common Ownership; or (3) an Appointed OFP of an Affiliated Entity."

The Exchange's proposal would incentivize certain members and member organizations, which are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify the Appointed OFP for Customer Rebates in Section B of the Pricing Schedule. Phlx members and member organizations that are under 75% common ownership or control will be considered under Common Ownership and therefore by definition are not eligible to enter an Affiliated Entity relationship.

Section II—Options Transaction Charge

The Exchange proposes to amend Section II of the Pricing Schedule to offer members and member organizations that are Appointed OFPs of Affiliated Entities transacting non-Customer orders an opportunity to reduce non-Penny Pilot electronic Options Transaction Charges. Today, the Exchange assesses a Professional,[11] Broker-Dealer[12] and Firm[13] a non-Penny Pilot electronic Options Transaction Charge of $0.75 per contract and a Specialist and Market Maker a $0.25 per contract non-Penny Pilot electronic Options Transaction Charge. The Exchange proposes to provide an Appointed OFP of an Affiliated Entity with an opportunity to lower the Professional, Broker-Dealer and Firm non-Penny Pilot electronic Options Transaction Charge from $0.75 to $0.60 per contract provided the Affiliated Entity qualifies for Customer Rebate Tiers 4[14] or 5[15] in Section B of the Pricing Schedule. The Exchange proposes to provide an Appointed MM of an Affiliated Entity with an opportunity to lower the Specialist and Market Maker non-Penny Pilot electronic Options Transaction Charge from $0.25 to $0.23 per contract provided the Affiliated Entity qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.[16]

The Exchange's proposal would incentivize certain members and member organizations, who are not under Common Ownership, to enter into an Affiliated Entity relationship for the purpose of aggregating Customer volume to qualify for reduced non-Penny Pilot Options Transaction Charges.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[19]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[20] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[22]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ."[23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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[11] The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[12] The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[13] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[14] The Tier 4 Customer Rebate in Section B of the Pricing Schedule requires Customer volume above 1.60% to 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options, excluding SPY. This rebate tier pays a Category A $0.20 rebate, a Category B $0.16 rebate and a Category C $0.22 rebate.

[15] The Tier 5 Customer Rebate in Section B of the Pricing Schedule requires Customer volume above 2.50% of National Customer Volume in Multiply Listed Equity and ETF Options, excluding SPY. This rebate tier pays a Category A $0.21 rebate, a Category B $0.17 rebate and a Category C $0.22 rebate.

[16] Today, any member or member organization under Common Ownership with another member or member organization that qualifies for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule is assessed either a $0.23 or $0.60 per contract non-Penny Pilot electronic Options Transaction Charge.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

[19] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7–10–04) ("Regulation NMS Adopting Release").

[20] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[21] *See id.* at 534–535.

[22] *See id.* at 537.

[23] *See id.* at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

The Exchange's proposal to amend the Preface of the Pricing Schedule to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is reasonable because the Exchange is proposing to identify the applicable market participants that may qualify to aggregate volume as an Affiliated Entity. Further the Exchange seeks to make clear the manner in which members and member organizations may participate on the Exchange as Affiliated Entities by setting timeframes for communicating agreements among market participants and terms of early termination. The Exchange also clearly states that no member or member organization under Common Ownership may become a counterparty to an Affiliated Entity. Any Phlx member or member organization who meets the definition of Common Ownership shall not be eligible to become an Affiliated Entity. The Exchange believes that these terms are reasonable because they would allow members or member organizations to elect to become a counterparty to an Affiliated Entity, provided they are not under Common Ownership.

The Exchange's proposal to amend the Preface of the Pricing Schedule to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" is equitable and not unfairly discriminatory because all member or members that are not under Common Ownership by definition may choose to enter into an Affiliated Entity relationship.

Section B Customer Rebates

The Exchange's proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying Appointed OFPs for Section B Customer Rebates is reasonable because it will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers and Specialists. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Appointed OFPs directing order flow to the Exchange may be eligible to qualify for a Customer Rebate or a higher Customer Rebate tier, with this proposal, as a result of aggregating volume with an Appointed MM and thereby qualifying for higher Customer Rebates. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer Rebates may also encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx. In turn, market participants would benefit from the increased liquidity with which to interact and potentially tighter spreads on orders. Overall, incentivizing market participants with increased opportunities to earn higher Customer rebates may increase the quality of the liquidity available on Phlx.

The Exchange's proposal to permit Affiliated Entities to aggregate Customer volume for purposes of qualifying Appointed OFPs for Section B Customer rebates is equitable and not unfairly discriminatory because all Phlx members and member organizations, other than those that meet the definition of Common Ownership, may elect to become an Affiliated Entity as either an Appointed MM or an Appointed OFP.[24] Also, each member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a higher rebate. Any market participant that by definition is not under Common Ownership may elect to become a counterparty of an Affiliated Entity.

The Exchange's proposal to exclude members and member organizations that are under Common Ownership from qualifying as an Affiliated Entity is reasonable because members and member organizations under Common Ownership may aggregate volume today for purposes of Section B Customer Rebates.[25] The Exchange's proposal to exclude members and member organizations that by definition are under Common Ownership from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because the Exchange will apply all qualifications in a uniform manner when approving Affiliated Entities. Excluding members and member organizations that by definition are under Common Ownership from also qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because they are able to aggregate volume today and qualify for Customer Rebates in Section B.

Section II—Options Transaction Charges

The Exchange's proposal to amend note 3 of Section II of the Pricing Schedule to offer members and member organizations that are Affiliated Entities an opportunity to reduce non-Customer non-Penny Pilot electronic Options Transaction Charges is reasonable because the Exchange believes it will encourage these market participants to transact a greater amount of Customer volume on Phlx. The Exchange's proposal to permit Appointed OFPs of Affiliated Entities to qualify for the reduced non-Penny Pilot electronic Options Transaction Charges by qualifying for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule will attract additional Customer order flow to the Exchange. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers and Specialists. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause a corresponding increase in order flow from other market participants. Appointed OFPs directing order flow to the Exchange may be eligible to qualify for these Customer rebate tiers as a result of aggregating volume with another appointed member and benefit from reduced non-Penny Pilot electronic Options Transaction Charges. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer rebates may also encourage the counterparties of an Affiliated Entity to incentivize each other to attract and seek to execute more Customer volume on Phlx. The Affiliated Entity relationship would permit the Appointed OFP to benefit from reduced non-Penny Pilot electronic Options Transaction Charges. In turn, market participants would benefit from the increased liquidity with which to interact and potentially tighter spreads on orders. The Exchange believes that lowering these fees for electronic non-Penny Pilot Options Transaction Charges, as compared to Penny Pilot Options Transaction Charges, is reasonable because today, Penny Pilot Options are the most traded and more liquid than Non-Penny Pilot Options. Electronic Penny Pilot Options Transaction Charges are lower for Professionals, Broker-Dealers and Firms because of the demand in the marketplace. The Exchange is offering Appointed OFPs the opportunity to reduce the higher electronic non-Penny Pilot Options Transaction Charges for

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[24] Both members must elect each other to become an Affiliated Entity for one year. Participation is effected by an agreement of both parties that have provided proper notification to the Exchange. A party may elect to terminate the agreement at any time prior to one year.

[25] *See* Section B of the Pricing Schedule.

Professionals, Broker-Dealers and Firms with this incentive, provided they qualify for the reduced non-Penny Pilot electronic Options Transaction Charges by qualifying for Customer Rebate Tiers 4 or 5 in Section B of the Pricing Schedule.

The Exchange's proposal to amend note 3 of Section II of the Pricing Schedule to offer members and member organizations that are Affiliated Entities an opportunity to reduce non-Customer non-Penny Pilot electronic Options Transaction Charges is equitable and not unfairly discriminatory because the Exchange will assess Appointed OFPs a reduced Professional, Broker-Dealer and Firm electronic Options Transaction Charge in Non-Penny Pilot Options. The Exchange does not assess Customers an electronic Options Transaction Charge in Non-Penny Pilot Options because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market Makers are assessed lower electronic Options Transaction Charges in Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[26] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange believes that offering Appointed OFPs an opportunity to lower fees for electronic non-Penny Pilot Options Transaction Charges as compared to Penny Pilot Options Transaction Charges is equitable and not unfairly discriminatory because the Exchange seeks to offer lower fees to those market participants paying the highest electronic non-Penny Pilot Options Transaction Charges.

The Exchange's proposal to amend note 4 of Section II of the Pricing Schedule to offer Appointed MMs of an Affiliated Entity an opportunity to reduce the Specialist and Marker Maker electronic non-Penny Pilot electronic Options Transaction Charges is reasonable because today the Exchange offers all market participants, excluding Customers who are not assessed a non-Penny Pilot electronic Options Transaction Charges, a means to reduce electronic Options Transaction Charges by qualifying for a Customer Rebate in Section B of the Pricing Schedule. Even with the reduced rate for Professionals, Broker-Dealers and Firms of $0.60 per contract, Specialists and Market Makers will continue to be assessed the lowest electronic Options Transaction Charge in Non-Penny Pilot Options because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[27] The Exchange believes that offering Appointed MMs an opportunity to benefit from lower fees for electronic non-Penny Pilot Options Transaction Charges is reasonable because the reduced electronic non-Penny Pilot will be consistent with the current lower reduced Penny Pilot Options Transaction charges ($0.25 vs. $0.22 per contract).

The Exchange's proposal to amend note 4 of Section II of the Pricing Schedule to offer Appointed MMs of an Affiliated Entity an opportunity to reduce the Specialist and Marker Maker electronic non-Penny Pilot electronic Options Transaction Charges is equitable and not unfairly discriminatory because the Exchange seeks to incentivize Specialists and Market Makers to increase their activity on Phlx and in turn facilitate tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[28] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The Exchange believes that offering Appointed MMs the opportunity to receive this additional benefit will continue to benefit the marketplace as described herein. The Exchange believes that lowering electronic non-Penny Pilot Options Transaction Charges as compared to electronic Penny Pilot Options Transaction Charges is equitable and not unfairly discriminatory because the Exchange is offering market participants the opportunity to reduce the higher electronic non-Penny Pilot Options Transaction Charges for Specialists and Market Makers with this incentive and permitting Appointed MMs to also receive this discount, provided they qualify.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that permitting counterparties to an Affiliated Entity to aggregate volume to qualify for certain rebates and reduced fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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[26] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[27] *Id.*

[28] *Id.*

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. In terms of inter-market competition, the Exchange notes that other options markets have similar incentives in place to attract volume to their markets.[29]

The Exchange's proposal to amend the Preface of the Pricing Schedule to add the definitions of "Appointed MM," "Appointed OFP" and "Affiliated Entity" does not impose an undue burden on competition because these definitions apply to all members and member organizations uniformly.

Section B Customer Rebates

In terms of intra-market competition, the Exchange does not believe that its proposal to permit counterparties of an Affiliated Entity to aggregate Customer volume for purposes of qualifying for Section B Customer Rebates imposes an undue burden on intra-market competition because all Phlx members and member organizations, other than those under Common Ownership, may become an Affiliated Entity as either an Appointed MM or an Appointed OFP. Also, each Phlx member or member organization may participate in only one Affiliated Entity relationship at a given time, which imposes a measure of exclusivity among market participants, allowing each party to rely on the other's executed Customer volume on Phlx to receive a corresponding benefit in terms of a higher rebate. The Exchange will apply all qualifications in a uniform manner to all market participants that elect to become counterparties of an Affiliated Entity. Any market participant that is by definition a member or member organization under Common Ownership may not become a counterparty of an Affiliated Entity.

Market Makers and Specialists are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market Makers and Specialists are subject to burdensome quoting obligations[30] to the market that do not apply to other market participants. Incentivizing these market participants to execute Customer volume on Phlx may result in tighter spreads. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Appointed OFPs directing order flow to the Exchange may be eligible to qualify for a Customer Rebate or a higher Customer Rebate tier, with this proposal, as a result of aggregating volume with an Appointed MM and thereby qualifying for higher Customer Rebates. Permitting members and member organizations to affiliate for purposes of qualifying for Section B Customer Rebates may also encourage the counterparties that comprise the Affiliated Entities to incentivize each other to attract and seek to execute more Customer volume on Phlx.

The Exchange's proposal to exclude members and member organizations that are under Common Ownership from becoming an Affiliated Entity does not impose and [sic] undue burden on intra-market competition because member and member organizations under Common Ownership may aggregate volume today for purposes of qualifying for Customer Rebates.

Section II—Options Transaction Charges

The Exchange's proposal to amend note 3 of Section II of the Pricing Schedule to offer Appointed OFPs of Affiliated Entities an opportunity to reduce non-Customer non-Penny Pilot electronic Options Transaction Charges does not impose an undue burden on intra-market competition because the Exchange will assess Appointed OFPs a reduced Professional, Broker-Dealer and Firm electronic Options Transaction Charge in Non-Penny Pilot Options. The Exchange does not assess Customers an electronic Options Transaction Charge in Non-Penny Pilot Options because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market Makers are assessed lower electronic Options Transaction Charges in Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[31] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange will apply all qualifications for the reduced rate in a uniform manner. The Exchange believes that lowering these fees for electronic non-Penny Pilot Options Transaction Charges as compared to electronic Penny Pilot Options Transaction Charges does not impose an undue burden on intra-market competition because the Exchange seeks to offer lower fees to those market participants paying the highest electronic non-Penny Pilot Options Transaction Charges.

The Exchange's proposal to amend note 4 of Section II of the Pricing Schedule to offer Appointed MMs of Affiliated Entities an opportunity to reduce non-Customer electronic non-Penny Pilot electronic Options Transaction Charges does not impose an undue burden on intra-market competition because the Exchange seeks to incentivize Specialists and Market Makers to increase their activity on Phlx and in turn facilitate tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[32] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The Exchange believes that permitting Affiliated [sic] MMs to receive this additional benefit will continue to benefit the market place as described herein. The Exchange believes that lowering these fees for electronic non-Penny Pilot Options Transaction Charges as compared to Penny Pilot Options Transaction Charges does not impose an undue burden on intra-market competition because the electronic non-Penny Pilot Options Transaction Charges is higher ($0.25 vs. $0.22 per contract).

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[29] *See* NYSE MKT LLC's ("NYSE Amex") pricing at NYSE Amex Options Fee Schedule). NYSE Amex permits aggregation of volume to qualify for the Amex Customer Engagement or ACE Program. *See* Bats BZX Exchange, Inc.'s ("BZX") fee schedule. BZX permits aggregation of volume to qualify for tiered pricing. *See* the Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule. CBOE permits aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP."

[30] *See* note 26 above.

[31] *See* note 26 above.

[32] *See* note 26 above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2016–62*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–62 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17668 Filed 7–26–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78386; File No. SR–NYSEArca–2016–79)]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF Under NYSE Arca Equities Rule 8.600

July 21, 2016.

On May 24, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 9, 2016.[3] On June 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 24, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 7, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2016–79).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17672 Filed 7–26–16; 8:45 am]

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[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77992 (Jun. 3, 2016) 81 FR 37222.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78387; File No. SR–NYSE–2016–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment Nos. 1 and 2, Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as Well as Amending the NYSE Price List To Reflect the Changes

July 21, 2016.

I. Introduction

On April 4, 2016, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location section of the NYSE Price List to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of "Affiliate." The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received two comment letters on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7]

The Commission is publishing this order to solicit comments on Amendment No. 2 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment Nos. 1 and 2, and on the issues presented by the proposal.

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to establish certain fees relating to end users. Specifically, the Exchange proposes to amend the co-location section of the NYSE Price List to (i) add the newly defined terms "Rebroadcasting User" and "Multicast End User;" as well as "Transmittal User" and "Unicast End User;" (ii) amend the definition of Affiliate; (iii) establish new reporting requirements applicable to Rebroadcasting Users and Transmittal Users; (iv) establish new fees applicable to Rebroadcasting Users and Transmittal Users; and (v) make certain related technical changes.[9]

The Exchange operates a data center in Mahwah, New Jersey ("data center") from which it provides co-location services to Users.[10] The Exchange states that in the data center, information flows over existing network connections in two formats: multicast and unicast. Multicast is a format in which information is sent one-way from the Exchange to multiple recipients at once, similar to a radio broadcast, and is currently employed for the transmission of market data.[11] Users receiving market data through the multicast format can retransmit that data to their customers.[12] Unicast format is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.[13]

Rebroadcasting Users/Multicast End Users

The Exchange proposes to add several new definitions to the Fee Schedules. The Exchange proposes to define a "Rebroadcasting User" as "a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers." [14] The Exchange also proposes to define "Multicast End User" as "a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User." [15] The Exchange notes that a Multicast End User may be, but is not required to be, a User or a Hosted Customer, and also that a customer of a Rebroadcasting User would be considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[16] Accordingly, as proposed, a Multicast End User is a recipient of raw Exchange market data that (i) originated from (but may not have been provided directly by) a User, provided such recipient is not an Affiliate of the originating User.[17]

In addition, as originally proposed, the Exchange would assess a Rebroadcasting User with one or two connections, either directly or through another Multicast End User, to a Multicast End User, a $1,700 monthly charge for the first two connections, and $850 for each additional connection to that Multicast End User.[18] To assess the proposed fees accurately, a Rebroadcasting User would be required to report to the Exchange on a monthly basis the number of its Multicast End Users, and the number of connections it has to each.[19] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Rebroadcasting User would not be assessed a fee for its first two Multicast End Users.[20]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77642 (April 18, 2016), 81 FR 23786 ("Notice").

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Price List.

[5] *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 ("Friedman Letter"), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 ("Pikat Letter") (together, the "Comment Letters").

In response to the Comment Letters, the NYSE submitted a response ("Response Letter") and filed Amendment No. 2.

[6] *See* Securities Exchange Act Release No. 34–77976 (June 2, 2016), 81 FR 36981.

[7] As more fully described below, in Amendment No. 2 the Exchange proposes that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-11/nyse201611-4.pdf*.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Notice, *supra* note 3, 81 FR at 23787; *see also* Amendment No. 1, *supra* note 4.

[10] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange.

[11] *See* Notice, *supra* note 3, 81 FR at 23786.

[12] *See id.*

[13] *See id.*

[14] *See id.* at 23787. Pursuant to the definition, the term "Rebroadcasting User" would exclude a User that "normalizes" (*i.e.*, alters) raw market data before sending it a Multicast End User. The definition of Rebroadcasting User also would not apply to a User that rebroadcasts third party data, because that data is not received from the Exchange. *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.* at 23788.

Transmittal Users/Unicast End Users

According to the Exchange, customers use unicast format to send messages related to orders or for clearing purposes.[21] A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange.[22] The Exchange proposes to define a "Transmittal User" as a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.[23] A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker.[24] Customers of a Transmittal User that send all unicast transmissions through a floor participant, such as a floor broker, would not be considered a Unicast End User even if such customer is enabled to use unicast format.[25] A Unicast End User may also enable one or more of their customers to transmit messages to and from the Unicast End User and thus such customers would also be considered a Unicast End User.[26] To assess the proposed fees accurately, a Transmittal User would be required to report to the Exchange on a monthly basis the number of its Unicast End Users, and the number of connections it has to each.[27]

As originally proposed, the Exchange would assess a Transmittal User with one or two connections, either directly or through another Unicast End User, to a Unicast End User, a $1,500 monthly charge for the first two connections,[28] and $750 for each additional connection to that Unicast End User.[29] As noted, there would be no charge to a Transmittal User for its connection to a customer submitting orders through a unicast connection to a floor participant.[30] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Transmittal User would not be charged the proposed fee for its first two Unicast End Users.[31]

Definition of Affiliate

The Exchange also proposes that the terms Multicast End User and Unicast End User would exclude an entity that is an Affiliate of its Rebroadcasting User or Transmittal User, respectively.[32] The Exchange proposes to amend its current definition of an Affiliate.[33] Under the new definition, an "Affiliate" of a User would be any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User.[34] For purposes of this definition, "control" means ownership or control of 50% or greater.[35] The purpose of the amendment is to provide that an "Affiliate" relationship exists whenever two entities are under common control, regardless of which entity controls the other.[36]

Exchange Support for Rebroadcasting Users/Transmittal User Fees

In its filing, the Exchange states that the proposed fees relate to additional connectivity and co-location services the Exchange provides to Rebroadcasting and Transmittal Users and would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users." [37] According to the Exchange, in the absence of the proposed end user fees, "no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from the services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits." [38]

The Exchange represents that it incurs more costs on the account of Rebroadcasting and Transmittal Users;[39] some of these costs being indirect, including overhead and technology infrastructure, administrative, maintenance and operational costs,[40] and others being in form of direct network support.[41] Additionally, the Exchange notes that it has established automated retransmission facilities for Users to receive multicast transmissions.[42]

As noted, the Commission received two comment letters.[43] These commenters expressed concern about the effect of the Rebroadcasting User fees that would be passed on to them as Multicast End Users consuming Exchange market data. One of these commenters states that it should not have to pay fees to help support the co-location infrastructure because it is not co-located.[44] This commenter states that for compliance purposes, a registered broker-dealer has no choice but to "consume depth-of-book market data" and that if the proposed fee is passed through, the commenter will have no choice but to accept it.[45] The other commenter states that the proposal provides "no evidence to support [the Exchange's] claim that its costs are higher to support the customers of subvendors."[46] This commenter states that the fees are "assigned only to vendors' customers who buy data from [the Exchange's] competitors" and is "[b]y definition . . . anti-competitive."[47] According to this commenter, the fees are introduced "solely for the purpose of protecting market data revenue."[48]

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[20] *See* Amendment No. 2, *supra* note 7.

[21] *See* Notice, *supra* note 3, 81 FR at 23787.

[22] *See id.* For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. *See id.*

[23] *See id.*

[24] *See id.* A Unicast End User may be a User or a Hosted Customer. *See id.*

[25] *See id.*

[26] *See id.* The Exchange notes that it is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User. *See id.*

[27] *See id.* at 23788.

[28] *See id.* at 23787.

[29] *See id.*

[30] *See supra* note 25 and accompanying text.

[31] *See* Amendment No. 2, *supra* note 7.

[32] *See* Notice, *supra* note 3, 81 FR at 23787. Users excluding Affiliates from their list of Multicast End Users or Unicast End Users may be required to certify to the Exchange the Affiliate status of such end user. *See id.* at 23788–89. The Exchange may ask Users that are neither Rebroadcasting Users or Transmittal Users to certify their status as ordinary Users. *See id.*

[33] *See* Notice, *supra* note 3, 81 FR at 23788.

[34] *See id.* at 23787–88.

[35] *See id.*

[36] *See id.*

[37] *See id.* at 23791.

[38] *See id.*

[39] *See id.* at 23788.

[40] *See id.* The Exchange notes, that it has made network infrastructure improvements over the years and established administrative controls. *See id.*

[41] *See id.* The Exchange states that when an issue arises, the Exchange and Rebroadcasting User or Transmittal User conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. The Exchange states that when the User is a Rebroadcasting User or Transmittal User, identifying the issue and providing the needed network support becomes more complicated because each of the entities involved has its own infrastructure and administration. By contrast, for Affiliates, the Exchange states that they typically act as one entity, with one infrastructure, one administration, and one network support group, making the network support effectively similar to supporting one entity. *See id.*

[42] *See id.* at 23789.

[43] *See supra* note 5.

[44] *See* Friedman Letter, *supra* note 5, at 1–2.

[45] *See id.* at 1–3.

In the Response Letter, the NYSE states that the Comment Letters have "not provided any credible argument why the [. . .] proposal is not consistent with the requirements of the Act."[49] The NYSE emphasizes that the proposal "compares the support the Exchange provides to Rebroadcasting Users to the support required by Users that are not Rebroadcasting Users,"[50] and states that the proposal will not impact market data revenue.[51] The NYSE states that "a market participant has additional options outside of co-location for connecting to Exchange market data" and that the commenters "ignor[e] the basic fact that the Exchange voluntarily allows Rebroadcasting Users to provide services out of the Exchange's co-location facility."[52] The NYSE further argues that it "would be illogical to argue . . . that just because Rebroadcasting Users provide services that overlap with services offered by the Exchange, the Exchange cannot charge the Rebroadcasting Users for the Exchange's services."[53] The NYSE states that it "generally provides more direct support to Rebroadcasting Users than other Users" and highlights the fact that a larger Rebroadcasting User made "between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar number of cabinets."[54]

Amendment No. 2

In Amendment No. 2, the Exchange offers additional justification for the proposed rule change. In Amendment No. 2, the Exchange proposes that a Rebroadcasting User not be charged a fee for its first two Multicast End Users, and similarly that a Transmittal User not be charged a fee for its first two Unicast End Users.[55] The Exchange states that it reviewed customer calls for assistance between June 1, 2015 and June 7, 2016, and compared the number of calls by Users it believes to be Rebroadcasting Users to the number of calls by a representative sample of other Users.[56] Consistent with its statements in the Response Letter, the Exchange states that "a comparison of calls by the larger Rebroadcasting User showed that the larger Rebroadcasting User made between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar numbers of cabinets. Indeed, such Rebroadcasting User made 20 more calls than the five largest Users combined."[57]

The Exchange adds that it believes that Rebroadcasting Users that have only one or two Multicast End Users are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users.[58] The Exchange further states that it does not have visibility into the number of Unicast End Users that individual Transmittal Users have, but believes that it is reasonable to extrapolate that a Transmittal User that has only one or two Unicast End Users may not need more network support than other Users.[59] Accordingly, the Exchange believes it is reasonable to not charge a Transmittal User a fee for its first two Unicast End Users.[60] Finally, the Exchange states that its proposal is analogous to the Nasdaq Stock Market's Extranet Access Fee.[61]

III. Proceedings to Determine Whether To Approve or Disapprove File No. SR–NYSE–2016–11 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[62] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"[63]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"[64] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."[65]

As discussed above, the Exchange states that the proposed end user fees applicable to Rebroadcasting Users and Transmittal Users would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users." [66] Although the Exchange notes that it has expended a variety of resources in connection with the support of Rebroadcasting Users and Transmittal Users, such as technology infrastructure, maintenance and operational costs, it does not explain—with one exception—how those expenditures do not equally benefit all Users.[67] The Exchange does take the position that it "generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support" and that "[b]ased on its experience . . . when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more difficult because each entity involved has its own infrastructure and administration." [68] The only evidence the Exchange provides in support of its assertion, however, is call log data showing that a single large Rebroadcasting User made substantially more customer assistance calls to the Exchange than other Users over a certain period.[69] The Commission is concerned that such data may not be sufficient to demonstrate that the proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act. In addition, to the extent the Exchange is focused on more directly recovering the costs of network support, it has not explained why it has not proposed to do so more precisely, such as by imposing a fee per customer service call, rather than by targeting a subset of customers of co-located Users regardless of their network support needs.

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[46] *See* Pikat Letter, *supra* note 5, at 1.

[47] *See id.*

[48] *See id.*

[49] *See* Response Letter, *supra* note 5, at 3.

[50] *See id.* at 7.

[51] *See id.* at 4.

[52] *See id.* at 6.

[53] *See id.* The Exchange also argues that "Rebroadcasting Users are not direct competitors of the Exchange's co-location services . . . [since] for example, the Exchange does not provide Users with hardware such as routers or switches, and does not offer managed services." *See id.*

[54] *See id.* at 7–8. The NYSE also states that its proposed fees follow a similar example set by the Nasdaq Stock Market's Extranet Access Fee. *See id.* at 9.

[55] *See* Amendment No. 2, *supra* note 7.

[56] *See id.*

[57] *See* Response Letter, *supra* note 5, at 8; *see also* Amendment No. 2, *supra* note 7.

[58] *See* Amendment No. 2, *supra* note 7.

[59] *See id.*

[60] *See id.*

[61] The Exchange cites Nasdaq Stock Market Rule 7025 and Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR–NASDAQ–2015–003), and states: "Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds are assessed a monthly access fee of $1,000 per recipient Customer Premises Equipment ("CPE") Configuration. A CPE Configuration is any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site. No extranet access fee is charged for connectivity to market data feeds containing only consolidated data.)." *See id.*

[62] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78f(b)(8).

Furthermore, the proposed fees would not apply to all end users of Rebroadcasting Users and Transmittal Users. For example, they would not apply to end users that are Affiliates of a Rebroadcasting User or a Transmittal User. While the Exchange asserts that "[i]n its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group," so that "the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved," [70] the Exchange provides no evidence to support its implication that Rebroadcasting Users and Transmittal Users with Affiliate end users require less Exchange resources than those with non-Affiliate end users. In addition, the proposed fees would not apply with respect to the first two end users of a Rebroadcasting User or a Transmittal User.[71] While the Exchange expresses its belief that, "based on the information available to it, Rebroadcasting Users [or Transmittal Users] that have only one or two [end users] are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users [or Transmittal Users]," [72] it offers no evidence in support of this belief. Finally, the proposed fees would not apply to Unicast End Users that send all unicast transmissions through a floor participant, such as a floor broker. In this case, the Exchange does not justify the exception on the basis of the Exchange resources required to support this type of end user, but rather because it "would encourage sending orders to Floor brokers for execution, thereby encouraging displayed liquidity" and "promoting public price discovery . . . which benefits all market participants." [73] The Exchange, however, provides no evidence to support the proposition that Unicast End Users submitting all of their orders through floor brokers provide more displayed liquidity or otherwise improve the market quality of the Exchange more than other types of Unicast End Users. Accordingly, the Commission is concerned that the Exchange has not demonstrated that the exceptions to its proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act.

Finally, the Commission is concerned that the Exchange has not demonstrated that its proposal does not impose an unnecessary or inappropriate burden on competition. The Exchange asserts that it meets this statutory standard because "it operates in a highly-competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange." [74] In response to a commenter's concern that the proposal could have an anti-competitive impact on vendors and their customers, the Exchange takes the position that Rebroadcasting Users like vendors "are not direct competitors of the Exchange's co-location services," because "[w]hile both offer connectivity to Exchange market data, Rebroadcasting Users provide their customers services that the Exchange's co-location service does not," such as hardware (*e.g.,* routers and switches) and fully-managed services.[75] The Exchange, however, does not clearly explain why the imposition of additional per-customer fees on co-located vendors and other redistributors of market data and connectivity services is not an unnecessary or inappropriate burden on competition with the Exchange's direct offering of such products, even if those redistributors offer other ancillary services.

For all of the foregoing reasons, the Commission believes that questions are raised as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; and not impose an unnecessary or inappropriate burden on competition.[76]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment Nos. 1 and 2. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment Nos. 1 and 2, is consistent with Sections 6(b)(4), (5), or (8) [77] or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[78] any request for an opportunity to make an oral presentation.[79]

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[66] See note 37 *supra* and accompanying text.

[67] *See* Notice, *supra* note 3, 81 FR at 23789.

[68] *See id.* at 23790.

[69] *See* Amendment No. 2, *supra* note 7.

[70] *See* Notice, *supra* note 3, 81 FR at 23790.

[71] *See* Amendment No. 2, *supra* note 7.

[72] *See id.*

[73] *See* Notice, *supra* note 3, 81 FR at 23791.

[74] *See id.* at 23791–92. The Exchange cites several additional justifications that closely mirror those, noted above, that support its assertion that its proposed fees are reasonable, equitably allocated and not unfairly discriminatory.

[75] *See* Response Letter, *supra* note 5, at 6.

[76] 15 U.S.C. 78f(b)(4), (b)(5), and (b)(8).

[77] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[78] 17 CFR 240.19b–4.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment Nos. 1 and 2, should be approved or disapproved by August 17, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 31, 2016. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(4), (5) and (8),[80] or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment Nos. 1 and 2, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–11, and should be submitted by August 17, 2016. Rebuttal comments should be submitted by August 31, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17673 Filed 7–26–16; 8:45 am]

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[79] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[80] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[81] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78389; File No. SR–NYSEMKT–2016–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment Nos. 1 and 2, Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as well as Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Reflect the Changes

July 21, 2016.

I. Introduction

On April 4, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location section of the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of "Affiliate." The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7]

The Commission is publishing this order to solicit comments on Amendment No. 2 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment Nos. 1 and 2, and on the issues presented by the proposal.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77640 (April 18, 2016), 81 FR 23780 ("Notice").

[4] Amendment No. 1 makes technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedules. Because Amendment No. 1 is technical, the Commission is not soliciting comment thereon.

[5] The Commission received two comment letters on a companion filing, NYSE–2016–11 (the "NYSE companion filing"), filed by the Exchange's affiliate, the New York Stock Exchange LLC ("NYSE"). *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 ("Friedman Letter"), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 ("Pikat Letter") (together, the "Comment Letters").

In response to the Comment Letters, the NYSE submitted a response ("Response Letter") and filed Amendment No. 2 to the NYSE companion filing. As they are relevant to the instant filing, the Comment Letters and Response Letter on the NYSE companion filing are discussed below.

[6] *See* Securities Exchange Act Release No. 34–77978 (June 2, 2016), 81 FR 36966.

[7] As more fully described below, in Amendment No. 2 the Exchange proposes that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysemkt-2016-15/nysemkt201615-2.pdf.* The Commission notes that in the comment file, Amendment No. 2 contains a cover page that erroneously refers to Amendment No. 1.

[8] 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to establish certain fees relating end users. Specifically, the Exchange proposes to amend the co-location section of the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule (collectively "Fee Schedules") to (i) add the newly defined terms "Rebroadcasting User" and "Multicast End User;" as well as "Transmittal User" and "Unicast End User;" (ii) amend the definition of Affiliate; (iii) establish new reporting requirements applicable to Rebroadcasting Users and Transmittal Users; (iv) establish new fees applicable to Rebroadcasting Users and Transmittal Users; and (v) make certain related technical changes.[9]

The Exchange operates a data center in Mahwah, New Jersey ("data center") from which it provides co-location services to Users.[10] The Exchange states that in the data center, information flows over existing network connections in two formats: Multicast and unicast. Multicast is a format in which information is sent one-way from the Exchange to multiple recipients at once, similar to a radio broadcast, and is currently employed for the transmission of market data.[11] Users receiving market data through the multicast format can retransmit that data to their customers.[12] Unicast format is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.[13]

Rebroadcasting Users/Multicast End Users

The Exchange proposes to add several new definitions to the Fee Schedules. The Exchange proposes to define a "Rebroadcasting User" as "a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers." [14] The Exchange also proposes to define "Multicast End User" as "a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User." [15] The Exchange notes that a Multicast End User may be, but is not required to be, a User or a Hosted Customer, and also that a customer of a Rebroadcasting User would be considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[16] Accordingly, as proposed, a Multicast End User is a recipient of raw Exchange market data that (i) originated from (but may not have been provided directly by) a User, provided such recipient is not an Affiliate of the originating User.[17]

In addition, as originally proposed, the Exchange would assess a Rebroadcasting User with one or two connections, either directly or through another Multicast End User, to a Multicast End User, a $1,700 monthly charge for the first two connections, and $850 for each additional connection to that Multicast End User.[18] To assess the proposed fees accurately, a Rebroadcasting User would be required to report to the Exchange on a monthly basis the number of its Multicast End Users, and the number of connections it has to each.[19] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Rebroadcasting User would not be assessed a fee for its first two Multicast End Users.[20]

Transmittal Users/Unicast End Users

According to the Exchange, customers use unicast format to send messages related to orders or for clearing purposes.[21] A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange.[22] The Exchange proposes to define a "Transmittal User" as a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.[23] A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker.[24] Customers of a Transmittal User that send all unicast transmissions through a floor participant, such as a floor broker, would not be considered a Unicast End User even if such customer is enabled to use unicast format.[25] A Unicast End User may also enable one or more of their customers to transmit messages to and from the Unicast End User and thus such customers would also be considered a Unicast End User.[26] To assess the proposed fees accurately, a Transmittal User would be required to report to the Exchange on a monthly basis the number of its Unicast End Users, and the number of connections it has to each.[27]

As originally proposed, the Exchange would assess a Transmittal User with one or two connections, either directly or through another Unicast End User, to a Unicast End User, a $1,500 monthly charge for the first two connections,[28] and $750 for each additional connection to that Unicast End User.[29] As noted, there would be no charge to a Transmittal User for its connection to a customer submitting orders through a unicast connection to a floor participant.[30] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Transmittal

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[9] *See* Notice, *supra* note 3, 81 FR at 23780; *see also* Amendment No. 1, *supra* note 4.

[10] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange.

[11] *See* Notice, *supra* note 3, 81 FR at 23780.

[12] *See id.*

[13] *See id.*

[14] *See id.* at 23781. Pursuant to the definition, the term "Rebroadcasting User" would exclude a User that "normalizes" (*i.e.,* alters) raw market data before sending it a Multicast End User. The definition of Rebroadcasting User also would not apply to a User that rebroadcasts third party data, because that data is not received from the Exchange. *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.* at 23782.

[20] *See* Amendment No. 2, *supra* note 7.

[21] *See* Notice, *supra* note 3, 81 FR at 23781.

[22] *See id.* For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. *See id.*

[23] *See id.*

[24] *See id.* A Unicast End User may be a User or a Hosted Customer. *See id.*

[25] *See id.*

[26] *See id.* The Exchange notes that it is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User. *See id.*

[27] *See id.* at 23782.

[28] *See id.* at 23781.

[29] *See id.*

[30] *See supra* note 25 and accompanying text.

User would not be charged the proposed fee for its first two Unicast End Users.[31]

Definition of Affiliate

The Exchange also proposes that the terms Multicast End User and Unicast End User would exclude an entity that is an Affiliate of its Rebroadcasting User or Transmittal User, respectively.[32] The Exchange proposes to amend its current definition of an Affiliate.[33] Under the new definition, an "Affiliate" of a User would be any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User.[34] For purposes of this definition, "control" means ownership or control of 50% or greater.[35] The purpose of the amendment is to provide that an "Affiliate" relationship exists whenever two entities are under common control, regardless of which entity controls the other.[36]

Exchange Support for Rebroadcasting Users/Transmittal User Fees

In its filing, the Exchange states that the proposed fees relate to additional connectivity and co-location services the Exchange provides to Rebroadcasting and Transmittal Users and would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users."[37] According to the Exchange, in the absence of the proposed end user fees, "no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from the services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits."[38]

The Exchange represents that it incurs more costs on the account of Rebroadcasting and Transmittal Users;[39] some of these costs being indirect, including overhead and technology infrastructure, administrative, maintenance and operational costs,[40] and others being in form of direct network support.[41] Additionally, the Exchange notes that it has established automated retransmission facilities for Users to receive multicast transmissions.[42]

As noted, the Commission received two comment letters on the NYSE companion filing, which are likewise applicable to this filing.[43] These commenters expressed concern about the effect of the Rebroadcasting User fees that would be passed on to them as Multicast End Users consuming Exchange market data. One of these commenters states that it should not have to pay fees to help support the co-location infrastructure because it is not co-located.[44] This commenter states that for compliance purposes, a registered broker-dealer has no choice but to "consume depth-of-book market data" and that if the proposed fee is passed through, the commenter will have no choice but to accept it.[45] The other commenter states that the proposal provides "no evidence to support [the Exchange's] claim that its costs are higher to support the customers of subvendors."[46] This commenter states that the fees are "assigned only to vendors' customers who buy data from [the Exchange's] competitors" and is "[b]y definition . . . anti-competitive."[47] According to this commenter, the fees are introduced "solely for the purpose of protecting market data revenue."[48]

In the Response Letter, the NYSE states that the Comment Letters have "not provided any credible argument why the [. . .] proposal is not consistent with the requirements of the Act."[49] The NYSE emphasizes that the proposal "compares the support the Exchange provides to Rebroadcasting Users to the support required by Users that are not Rebroadcasting Users,"[50] and states that the proposal will not impact market data revenue.[51] The NYSE states that "a market participant has additional options outside of co-location for connecting to Exchange market data" and that the commenters "ignor[e] the basic fact that the Exchange voluntarily allows Rebroadcasting Users to provide services out of the Exchange's co-location facility."[52] The NYSE further argues that it "would be illogical to argue . . . that just because Rebroadcasting Users provide services that overlap with services offered by the Exchange, the Exchange cannot charge the Rebroadcasting Users for the Exchange's services."[53] The NYSE states that it "generally provides more direct support to Rebroadcasting Users than other Users" and highlights the fact that a larger Rebroadcasting User made "between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with a similar number of cabinets."[54]

Amendment No. 2

In Amendment No. 2, the Exchange offers additional justification for the proposed rule change. In Amendment No. 2, the Exchange proposes that a Rebroadcasting User not be charged a fee for its first two Multicast End Users, and similarly that a Transmittal User not be charged a fee for its first two Unicast End Users.[55] The Exchange states that it reviewed customer calls for assistance between June 1, 2015 and June 7, 2016, and compared the number of calls by Users it believes to be Rebroadcasting Users to the number of calls by a representative sample of other Users.[56] Consistent with the NYSE statements in the Response Letter, the Exchange states that "a comparison of calls by the larger Rebroadcasting User showed that the larger Rebroadcasting User made between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar numbers of cabinets. Indeed, such Rebroadcasting User made 20 more calls than the five largest Users combined."[57]

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[31] *See* Amendment No. 2, *supra* note 7.

[32] *See id.* at 23781. Users excluding Affiliates from their list of Multicast End Users or Unicast End Users may be required to certify to the Exchange the Affiliate status of such end user. *See id.* at 23782. The Exchange may ask Users that are neither Rebroadcasting Users or Transmittal Users to certify their status as ordinary Users. *See id.*

[33] *See id.* at 23781.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *See id.* at 23782.

[40] *See id.* The Exchange notes, that it has made network infrastructure improvements over the years and established administrative controls. *See id.*

[41] *See id.* The Exchange states that when an issue arises, the Exchange and Rebroadcasting User or Transmittal User conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. The Exchange states that when the User is a Rebroadcasting User or Transmittal User, identifying the issue and providing the needed network support becomes more complicated because each of the entities involved has its own infrastructure and administration. By contrast, for Affiliates, the Exchange states that they typically act as one entity, with one infrastructure, one administration, and one network support group, making the network support effectively similar to supporting one entity. *See id.*

[42] *See id.*

[43] *See supra* note 5.

[44] *See* Friedman Letter, *supra* note 5, at 1–2.

[45] *See id.* at 1–3.

[46] *See* Pikat Letter, *supra* note 5, at 1.

[47] *See id.*

[48] *See id.*

[49] *See* Response Letter, *supra* note 5, at 3.

[50] *See id.* at 7.

[51] *See id.* at 4.

[52] *See id.* at 6.

[53] *See id.* The Exchange also argues that "Rebroadcasting Users are not direct competitors of the Exchange's co-location services . . . [since] for example, the Exchange does not provide Users with hardware such as routers or switches, and does not offer managed services." *See id.*

[54] *See id.* at 7–8. The NYSE also states that its proposed fees follow a similar example set by the Nasdaq Stock Market's Extranet Access Fee. *See id.* at 9.

[55] *See* Amendment No. 2, *supra* note 7.

The Exchange adds that it believes that Rebroadcasting Users that have only one or two Multicast End Users are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users.[58] The Exchange further states that it does not have visibility into the number of Unicast End Users that individual Transmittal Users have, but believes that it is reasonable to extrapolate that a Transmittal User that has only one or two Unicast End Users may not need more network support than other Users.[59] Accordingly, the Exchange believes it is reasonable to not charge a Transmittal User a fee for its first two Unicast End Users.[60] Finally, the Exchange states that its proposal is analogous to the Nasdaq Stock Market's Extranet Access Fee.[61]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–NYSEMKT–2016–15 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[62] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"[63]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"[64] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."[65]

As discussed above, the Exchange states that the proposed end user fees applicable to Rebroadcasting Users and Transmittal Users would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users."[66] Although the Exchange notes that it has expended a variety of resources in connection with the support of Rebroadcasting Users and Transmittal Users, such as technology infrastructure, maintenance and operational costs, it does not explain—with one exception—how those expenditures do not equally benefit all Users.[67] The Exchange does take the position that it "generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support" and that "[b]ased on its experience . . . when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more difficult because each entity involved has its own infrastructure and administration."[68] The only evidence the Exchange provides in support of its assertion, however, is call log data showing that a single large Rebroadcasting User made substantially more customer assistance calls to the Exchange than other Users over a certain period.[69] The Commission is concerned that such data may not be sufficient to demonstrate that the proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act. In addition, to the extent the Exchange is focused on more directly recovering the costs of network support, it has not explained why it has not proposed to do so more precisely, such as by imposing a fee per customer service call, rather than by targeting a subset of customers of co-located Users regardless of their network support needs.

Furthermore, the proposed fees would not apply to all end users of Rebroadcasting Users and Transmittal Users. For example, they would not apply to end users that are Affiliates of a Rebroadcasting User or a Transmittal User. While the Exchange asserts that "[i]n its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group," so that "the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved,"[70] the Exchange provides no evidence to support its implication that Rebroadcasting Users and Transmittal Users with Affiliate end users require less Exchange resources than those with non-Affiliate end users. In addition, the proposed fees would not apply with respect to the first two end users of a Rebroadcasting User or a Transmittal User.[71] While the Exchange expresses its belief that, "based on the information available to it, Rebroadcasting Users [or Transmittal Users] that have only one or two [end users] are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users [or Transmittal Users]," [72] it offers no evidence in support of this belief. Finally, the proposed fees would not apply to Unicast End Users that send all unicast transmissions through a floor participant, such as a floor broker. In this case, the Exchange does not justify the exception on the basis of the Exchange resources required to support this type of end user, but rather because it "would encourage sending orders to Floor brokers for execution, thereby encouraging displayed liquidity" and "promoting public price discovery . . . which benefits all market participants." [73] The Exchange, however, provides no evidence to support the proposition that Unicast End Users submitting all of their orders through floor brokers provide more displayed liquidity or otherwise improve the market quality of the Exchange more than other types of Unicast End Users. Accordingly, the Commission is concerned that the Exchange has not demonstrated that the exceptions to its proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act.

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[56] *See id.*

[57] *See* Response Letter, *supra* note 5, at 8; *see also* Amendment No. 2, *supra* note 7.

[58] *See* Amendment No. 2, *supra* note 7.

[59] *See* Amendment No. 2, *supra* note 7.

[60] *See id.*

[61] The Exchange cites Nasdaq Stock Market Rule 7025 and Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR–NASDAQ–2015–003), and states: "Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds are assessed a monthly access fee of $1,000 per recipient Customer Premises Equipment ("CPE") Configuration. A CPE Configuration is any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site. No extranet access fee is charged for connectivity to market data feeds containing only consolidated data.)." *See id.*

[62] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78f(b)(8).

[66] See note 37 *supra* and accompanying text.

[67] *See* Notice, *supra* note 3, 81 FR at 23783.

[68] *See id.* at 23784.

[69] *See* Amendment No. 2, *supra* note 7.

[70] *See* Notice, *supra* note 3, 81 FR at 23784.

[71] *See* Amendment No. 2, *supra* note 7.

Finally, the Commission is concerned that the Exchange has not demonstrated that its proposal does not impose an unnecessary or inappropriate burden on competition. The Exchange asserts that it meets this statutory standard because "it operates in a highly-competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange." [74] In response to a commenter's concern that the proposal could have an anti-competitive impact on vendors and their customers, the Exchange takes the position that Rebroadcasting Users like vendors "are not direct competitors of the Exchange's co-location services," because "[w]hile both offer connectivity to Exchange market data, Rebroadcasting Users provide their customers services that the Exchange's co-location service does not," such as hardware (*e.g.*, routers and switches) and fully-managed services.[75] The Exchange, however, does not clearly explain why the imposition of additional per-customer fees on co-located vendors and other redistributors of market data and connectivity services is not an unnecessary or inappropriate burden on competition with the Exchange's direct offering of such products, even if those redistributors offer other ancillary services.

For all of the foregoing reasons, the Commission believes that questions are raised as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; and not impose an unnecessary or inappropriate burden on competition.[76]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment Nos. 1 and 2. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment Nos. 1 and 2, is consistent with Sections 6(b)(4), (5), or (8) [77] or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[78] any request for an opportunity to make an oral presentation.[79]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment Nos. 1 and 2, should be approved or disapproved by August 17, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 31, 2016. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(4), (5) and (8),[80] or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment Nos. 1 and 2, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEMKT–2016–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–15, and should be submitted by August 17, 2016. Rebuttal comments should be submitted by August 31, 2016.

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[72] *See id.*

[73] *See* Notice, *supra* note 3, 81 FR at 23785.

[74] *See id.* The Exchange cites several additional justifications that closely mirror those, noted above, that support its assertion that its proposed fees are reasonable, equitably allocated and not unfairly discriminatory.

[75] *See* Response Letter, *supra* note 5, at 6.

[76] 15 U.S.C. 78f(b)(4), (b)(5), and (b)(8).

[77] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[78] 17 CFR 240.19b–4.

[79] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[80] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17675 Filed 7–26–16; 8:45 am]

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[81] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78379; File No. SR–DTC–2016–003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Pursuant to Which DTC Would Impose Deposit Chills and Global Locks and Provide Fair Procedures to Issuers

July 21, 2016.

On May 27, 2016, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2016–003 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to establish (i) the circumstances under which DTC would impose and release a restriction on Deposits of an Eligible Security (a ''Deposit Chill'') or on book-entry services for an Eligible Security (a ''Global Lock''); and (ii) the fair procedures for notice and an opportunity for the issuer of the Eligible Security (the ''Issuer'') to challenge the Deposit Chill or Global Lock (each, a ''Restriction''). The proposed rule change was published for comment in the **Federal Register** on June 9, 2016.[3] The Commission received three comment letters to the Proposed Rule Change.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 24, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the comments received on the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates September 7, 2016 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–DTC–2016–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17665 Filed 7–26–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232 (June 9, 2016) (SR–DTC–2016–003).

[4] *See* letters from Charles V. Rossi, Chairman, The Securities Transfer Association, Inc. Board Advisory Committee, dated June 30, 2016, to Brent J. Fields, Secretary, Commission; Dorian Deyet, dated June 30, 2016 (two submissions).

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78383; File No. SR–NYSEArca–2016–104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rules 2.16(c) and 2.21(i) to Harmonize the Requirement of When an ETP Holder Must File a Uniform Termination Notice for Securities Industry Registration With the Rules of Other Exchanges and FINRA

July 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 14, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rules 2.16(c) and 2.21(i) to harmonize the requirement of when an ETP Holder must file an [sic] Uniform Termination Notice for Securities Industry Registration (''Form U–5'') with the rules of other exchanges and FINRA. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rules 2.16(c) and 2.21(i) to harmonize the requirement of when an ETP Holder must file a Form U–5 with the requirements on [sic] other exchanges and the Financial Industry Regulatory Authority (''FINRA''). This filing is not intended to address any other registration requirements in Exchange rules.

Specifically, under current Rule 2.16(c), an ETP Holder is required to electronically file a Form U–5 and any amendment thereto within 30 days of the termination when a person associated with the ETP Holder terminates their affiliation with an ETP Holder. Under current Rule 2.21(i), an ETP Holder is required to electronically file a Form U–5 and any amendment thereto within 30 business days of the termination date of an employee. While each of these rules govern the same topic, they do not use the same rule language.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange proposes to amend these two rules by replacing the current requirements of when to electronically file a Form U–5 with the same requirement in each rule that an ETP Holder promptly file a Form U–5 electronically with CRD, but not later than 30 calendar days after the date of termination of a person associated with the ETP Holder or an employee (as applicable). The proposed rule would further require that any amendment to a Form U–5 must also be promptly filed electronically with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule would provide that all Forms U–5 must also be provided to the terminated person concurrently with filing.[4]

The proposed rule text is based on the requirements of other exchanges and FINRA and therefore would harmonize the requirement of when an ETP Holder must file a Form U–5 with the rules of other exchanges and FINRA.[5] The Exchange believes that the proposed rule changes will promote the protection of investors by adding that a Form U–5 be filed promptly, rather than the current requirement that a Form U–5 be filed within 30 days. The Exchange believes that this proposed requirement may lead to Form U–5s being filed sooner than the current 30 days requirement. Consistent with the rules of other exchanges and FINRA, the rule would further provide that a Form U–5 should be filed not later than 30 days after the date of termination. The Exchange believes that this timing, combined with the requirement to file promptly, may lead to firms submitting Form U–5s on a more prompt basis. In addition, the proposed rule would harmonize the standard, thus reducing the burden on competition for ETP Holders that are members of multiple exchanges and FINRA to meet similar requirements. Such conformance to the prevalent standard would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act,[6] in general, and furthers [sic] the objectives of Section 6(b)(5),[7] in particular, in that it is [sic] designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule changes would remove impediments to and perfect the mechanisms of a free and open market by conforming the time period within which ETP Holders must file a Form U–5 to the requirement that such forms be filed promptly, but not later than 30 calendar days after the termination event. The Exchange believes that the proposed rule changes would protect investors and the public interest by adding that Form U–5s should be filed promptly, rather than requiring only that they be filed within 30 days. In addition, the Exchange believes that adding the requirement that a Form U–5 be filed not later than 30 calendar days after the event would eliminate the disparity among the exchanges, other SROs and the affected persons stemming from the cessation of their employment. In this regard, the proposed changes would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as they would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence. Such action would not affect nor diminish the abilities of the Exchange or an ETP Holder to fulfill their [sic] regulatory responsibilities under the Act or the rules promulgated thereunder, including but not limited to the responsibilities to monitor the activities of such persons, nor would such proposed amendment affect the rights of such terminated persons.

The Exchange believes this additional transparency and clarity removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest by harmonizing the time period for filing the requisite Form U–5 across multiple SROs, and by imposing the requirement that such forms be filed promptly.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule changes would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather to harmonize an [sic] Exchange time-filing requirements to a standard prevalent among other exchanges and FINRA, thereby reducing any potential confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule changes would serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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[4] The proposed rule changes would also decrease the current time period of 30 "business" days within which an ETP Holder is required to file a Form U–5 for a terminated employee.

[5] *See* New York Stock Exchange LLC ("NYSE") Rule 345(a).17(a) and (b) (requiring that a Form U–5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U–5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided concurrently to the person whose association has been terminated); BATS BZX Exchange, Inc. ("BZX") Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U–5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U–5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment should be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U–5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] This filing is intended to address only the filing requirements of Forms U–5; it is not intended to address or affect any other mandatory filing requirements or procedures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–104 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17669 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78376; File No. SR–NYSEMKT–2016–70]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule

July 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 11, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") to add additional wireless connections and update or remove obsolete text. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's co-location[4] services include the means for Users[5] to receive market data feeds from third party markets ("Third Party Data") through a wireless connection.[6] The Exchange currently offers wireless connectivity to six Third Party Data feeds.[7] The Exchange proposes to amend the Price List and Fee Schedule to (a) expand the existing wireless connections to Bats Pitch BZX Gig shaped data ("BZX") and DirectEdge EDGX Gig shaped data ("EDGX") to include additional market data feeds, and (b) provide a wireless connection to NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data. The Exchange also proposes to update or remove obsolete text.

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release No. 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85 ("Wireless Approval Release").

[7] *See* Securities Exchange Act Release No. 77120 (February 11, 2016), 81 FR 8316 (February 18, 2016) (SR–NYSEMKT–2016–02.

More specifically, the Exchange proposes to amend the connections to BZX and EDGX as follows:

- The wireless connection to BZX data would also include Bats Pitch BYX Gig shaped data ("BYX"), and
- the wireless connection to EDGX data would also include Bats EDGA Gig shaped data ("EDGA").

The related fees would not change.

Any User that presently has a wireless connection to BZX or EDGX data would also receive BYX or EDGA data, respectively, upon effectiveness of the proposed change. Such User would not be required to pay a second non-recurring initial charge.

In addition, the Exchange proposes to add a seventh Third Party Data feed, which would include NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data ("FPGA and TotalView-ITCH"). Both such data feeds are currently offered separately. For each wireless connection to FPGA and TotalView-ITCH, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge ("MRC") of $14,500.

Any User that presently has a wireless connection to the separate FPGA and TotalView-ITCH feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change. Such User would not be required to pay another non-recurring initial charge.

The Exchange accordingly proposes to revise the Price List and Fee Schedule to include the following:

Description	Amount of charge
Wireless connection of Bats Pitch BZX Gig shaped data and Bats Pitch BYX Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of Bats EDGX Gig shaped data and Bats EDGA Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $14,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

As with all the Third Party Data, the Exchange would utilize a network vendor to provide a wireless connection to BZX and BYX, EDGX and EDGA or FPGA and TotalView-ITCH data (together, the "Additional Third Party Data") through wireless connections from an Exchange access center to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment. A User that wished to receive Additional Third Party Data would enter into a contract with the relevant third party provider, which would charge the User the applicable market data fees. The Exchange would charge the User fees for the wireless connection.[8]

As with the previously approved wireless connections to Third Party Data, if a User purchases two wireless connections to Additional Third Party Data, it pays two non-recurring initial charges. Wireless connections include the use of one port for connectivity to Third Party Data.[9] As with the previously approved wireless connections to Third Party Data, the Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of Additional Third Party Data for a month before incurring any MRCs.

The Exchange proposes to offer the wireless connections to provide Users with an alternative means of connectivity to Additional Third Party Data. Currently, Users can receive such Third Party Data from wireless networks offered by third party vendors.[10] Users may also receive connections to Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.[11]

The proposed connectivity to the FPGA and TotalView-ITCH data feeds would be available upon effectiveness. The proposed connectivity to the BZX and BYX or EDGX and EDGA data feeds is expected to be available no later than September 1, 2016. The Exchange will announce the date that the wireless connections will be made available through a customer notice.

In addition, the Exchange proposes to replace the existing references to "DirectEdge" and "BATS" in the Price List and Fee Schedule with references to "Bats" in order to reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively.[12]

Finally, the Exchange proposes to delete statements in the Price List and Fee Schedule that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, as such statements are obsolete. This proposed change would have no impact on pricing.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[14]

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[8] A User only receives the Third Party Data for which it enters into a contract with the third party provider. If a User requested not to be connected to one of the Third Party Data feeds (for example, if it entered into a contract with BATS for BZX but not BYX, or for EDGA but not EDGX), the Exchange would only provide the wireless connection requested, but would charge the User the full $5000 initial fee, plus $6000/monthly fee for the wireless connection.

[9] A User only requires one port to connect to the Third Party Data, irrespective of how many of the wireless connections it orders. It may, however, purchase additional ports. *See* Wireless Approval Release, *supra* note 6, at 81649.

[10] Currently, at least six third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

[11] The IP network is a local area network available in the data center. *See* Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 77298 (March 4, 2016), 81 FR 12757 (March 10, 2016) (SR–EDGX–2016–04) (notice of filing and immediate effectiveness of proposed rule change to reflect a legal name change by BATS Global Markets, Inc. and the legal names of certain subsidiaries).

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed service is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposed changes would provide Users with an alternative means of connectivity to the Additional Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain the Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections to Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive Additional Third Party Data, allowing a User that opts to receive such Additional Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to Additional Third Party Data would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer the wireless connections to described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

The Exchange believes that it is reasonable not to charge a User a second non-recurring initial charge if it has a wireless connection to BZX or EDGX data as of the date of effectiveness of the proposed change, because such User would have already paid a non-recurring initial charge for the wireless connection to BZX or EDGX data that it already has. The Exchange believes that it is reasonable that a User that presently has a wireless connection to the separate FPGA and TotalView-ITCH feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change, because such User would have the same service as a User that obtained wireless connectivity to the FPGA and TotalView-ITCH feeds after effectiveness. Similarly, the Exchange believes that it is reasonable that such a User would not be required to pay another non-recurring initial charge, because such User would have already paid non-recurring initial charges for the two wireless connections that it already has.

The Exchange believes that it is reasonable that a User that has already purchased wireless connections to other Third Party Data would be charged a non-recurring initial charge when it purchases a wireless connection to Additional Third Party Data, because the Exchange would incur certain costs in installing the wireless connection to such Third Party Data irrespective of whether the User had existing wireless connections to other Third Party Data. Such costs related to initial installation include, in particular, costs related to personnel required for initial installation and testing. The costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions.

The Exchange believes that the proposed pricing is reasonable because it allows Users to select the Additional Third Party Data connectivity option that better suits their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. For competitive reasons, the Exchange has opted not to change the existing fees for the BZX and EDGX Third Party Data feeds. Accordingly, Users that already receive the BZX or EDGX Third Party Data feed will receive an additional feed at no incremental cost.

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[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–49 and SR–NYSEArca–2016–99.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed for a month before incurring any monthly recurring fees and may act as an incentive to Users to connect to Additional Third Party Data.

Moreover, the Exchange believes that the proposed fees are equitably allocated and not unfairly discriminatory because the wireless connections to Additional Third Party Data would provide Users with an alternative means of connectivity to such feeds. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that deleting statements in the Price List and Fee Schedule that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, is reasonable, equitable and not unfairly discriminatory because the reference is obsolete and no longer has an impact on pricing. The Exchange also believes that replacing the existing references to "DirectEdge" and "BATS" in the Price List and Fee Schedule with references to "Bats" is reasonable, equitable and not unfairly discriminatory, because it will reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively. The proposed changes would result in the removal or update of obsolete text from the Price List and Fee Schedule and therefore add greater clarity to the Price List and Fee Schedule regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will provide Users with wireless connectivity to additional Third Party Data feeds. Currently, Users can receive Additional Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the other wireless networks. Accordingly, the proposed wireless connections to Additional Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connections to Additional Third Party Data would compete not just with other wireless connections to such Additional Third Party Data, but also with fiber optic network connections to Additional Third Party Data, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize wireless connections would be able to obtain Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity to Additional Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive such Additional Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connections to Additional Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The wireless network has exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connections to Additional Third Party Data would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.[19]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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[18] 15 U.S.C. 78f(b)(8).

[19] The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[22] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[23]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow Users that elect to receive wireless connections to both NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data to do so without delay at a reduced fee through the new bundle price. The Commission has therefore determined to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[25] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–70, and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17662 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78378; File No. SR–NYSE–2016–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List

July 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 11, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List to add additional wireless connections and update or remove obsolete text. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[20] 15 U.S.C. 78s(b)(3)(a)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's co-location[4] services include the means for Users[5] to receive market data feeds from third party markets ("Third Party Data") through a wireless connection.[6] The Exchange currently offers wireless connectivity to six Third Party Data feeds.[7] The Exchange proposes to amend the Exchange's Price List to (a) expand the existing wireless connections to Bats Pitch BZX Gig shaped data ("BZX") and DirectEdge EDGX Gig shaped data ("EDGX") to include additional market data feeds, and (b) provide a wireless connection to NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data. The Exchange also proposes to update or remove obsolete text.

More specifically, the Exchange proposes to amend the connections to BZX and EDGX as follows:

- The wireless connection to BZX data would also include Bats Pitch BYX Gig shaped data ("BYX"), and
- the wireless connection to EDGX data would also include Bats EDGA Gig shaped data ("EDGA").

The related fees would not change.

Any User that presently has a wireless connection to BZX or EDGX data would also receive BYX or EDGA data, respectively, upon effectiveness of the proposed change. Such User would not be required to pay a second non-recurring initial charge.

In addition, the Exchange proposes to add a seventh Third Party Data feed, which would include NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data ("FPGA and TotalView-ITCH"). Both such data feeds are currently offered separately. For each wireless connection to FPGA and TotalView-ITCH, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge ("MRC") of $14,500.

Any User that presently has a wireless connection to the separate FPGA and TotalView-ITCH feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change. Such User would not be required to pay another non-recurring initial charge.

The Exchange accordingly proposes to revise its Price List to include the following:

Description	Amount of charge
Wireless connection of Bats Pitch BZX Gig shaped data and Bats Pitch BYX Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of Bats EDGX Gig shaped data and Bats EDGA Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $14,500 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

As with all the Third Party Data, the Exchange would utilize a network vendor to provide a wireless connection to BZX and BYX, EDGX and EDGA or FPGA and TotalView-ITCH data (together, the "Additional Third Party Data") through wireless connections from an Exchange access center to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment. A User that wished to receive Additional Third Party Data would enter into a contract with the relevant third party provider, which would charge the User the applicable market data fees. The Exchange would charge the User fees for the wireless connection.[8]

As with the previously approved wireless connections to Third Party Data, if a User purchases two wireless connections to Additional Third Party Data, it pays two non-recurring initial charges. Wireless connections include the use of one port for connectivity to Third Party Data.[9] As with the previously approved wireless connections to Third Party Data, the Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of Additional Third Party Data for a month before incurring any MRCs.

The Exchange proposes to offer the wireless connections to provide Users with an alternative means of connectivity to Additional Third Party Data. Currently, Users can receive such Third Party Data from wireless networks offered by third party vendors.[10] Users may also receive connections to Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.[11]

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[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52) ("Wireless Approval Release").

[7] *See* Securities Exchange Act Release No. 77119 (February 11, 2016), 81 FR 8313 (February 18, 2016) (SR–NYSE–2016–01).

[8] A User only receives the Third Party Data for which it enters into a contract with the third party provider. If a User requested not to be connected to one of the Third Party Data feeds (for example, if it entered into a contract with BATS for BZX but not BYX, or for EDGA but not EDGX), the Exchange would only provide the wireless connection requested, but would charge the User the full $5000 initial fee, plus $6000/monthly fee for the wireless connection.

[9] A User only requires one port to connect to the Third Party Data, irrespective of how many of the wireless connections it orders. It may, however, purchase additional ports. *See* Wireless Approval Release, *supra* note 6, at 81610.

[10] Currently, at least six third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

[11] The IP network is a local area network available in the data center. *See* Securities Exchange Act

The proposed connectivity to the FPGA and TotalView-ITCH data feeds would be available upon effectiveness. The proposed connectivity to the BZX and BYX or EDGX and EDGA data feeds is expected to be available no later than September 1, 2016. The Exchange will announce the date that the wireless connections will be made available through a customer notice.

In addition, the Exchange proposes to replace the existing references to "DirectEdge" and "BATS" in the Price List with references to "Bats" in order to reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively.[12]

Finally, the Exchange proposes to delete statements in the Price List that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, as such statements are obsolete. This proposed change would have no impact on pricing.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[14]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed service is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposed changes would provide Users with an alternative means of connectivity to the Additional Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain the Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections to Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive Additional Third Party Data, allowing a User that opts to receive such Additional Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select wireless connections to Additional Third Party Data would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer the wireless connections to described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

The Exchange believes that it is reasonable not to charge a User a second non-recurring initial charge if it has a wireless connection to BZX or EDGX data as of the date of effectiveness of the proposed change, because such User would have already paid a non-recurring initial charge for the wireless connection to BZX or EDGX data that it already has. The Exchange believes that it is reasonable that a User that presently has a wireless connection to the separate FPGA and TotalView-ITCH

Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 77298 (March 4, 2016), 81 FR 12757 (March 10, 2016) (SR–EDGX–2016–04) (notice of filing and immediate effectiveness of proposed rule change to reflect a legal name change by BATS Global Markets, Inc. and the legal names of certain subsidiaries).

[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* SR–NYSE–2013–59, *supra* note 5 at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2016–70 and SR–NYSEArca–2016–99.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change, because such User would have the same service as a User that obtained wireless connectivity to the FPGA and TotalView-ITCH feeds after effectiveness. Similarly, the Exchange believes that it is reasonable that such a User would not be required to pay another non-recurring initial charge, because such User would have already paid non-recurring initial charges for the two wireless connections that it already has.

The Exchange believes that it is reasonable that a User that has already purchased wireless connections to other Third Party Data would be charged a non-recurring initial charge when it purchases a wireless connection to Additional Third Party Data, because the Exchange would incur certain costs in installing the wireless connection to such Third Party Data irrespective of whether the User had existing wireless connections to other Third Party Data. Such costs related to initial installation include, in particular, costs related to personnel required for initial installation and testing. The costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions.

The Exchange believes that the proposed pricing is reasonable because it allows Users to select the Additional Third Party Data connectivity option that better suits their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. For competitive reasons, the Exchange has opted not to change the existing fees for the BZX and EDGX Third Party Data feeds. Accordingly, Users that already receive the BZX or EDGX Third Party Data feed will receive an additional feed at no incremental cost.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed for a month before incurring any monthly recurring fees and may act as an incentive to Users to connect to Additional Third Party Data.

Moreover, the Exchange believes that the proposed fees are equitably allocated and not unfairly discriminatory because the wireless connections to Additional Third Party Data would provide Users with an alternative means of connectivity to such feeds. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that deleting statements in the Price List that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, is reasonable, equitable and not unfairly discriminatory because the reference is obsolete and no longer has an impact on pricing. The Exchange also believes that replacing the existing references to "DirectEdge" and "BATS" in the Price List with references to "Bats" is reasonable, equitable and not unfairly discriminatory, because it will reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively. The proposed changes would result in the removal or update of obsolete text from the Price List and therefore add greater clarity to the Price List regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will provide Users with wireless connectivity to additional Third Party Data feeds. Currently, Users can receive Additional Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the other wireless networks. Accordingly, the proposed wireless connections to Additional Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connections to Additional Third Party Data would compete not just with other wireless connections to such Additional Third Party Data, but also with fiber optic network connections to Additional Third Party Data, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize wireless connections would be able to obtain Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity to Additional Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive such Additional Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connections to Additional Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The wireless network has exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connections to Additional Third Party Data would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.[19]

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[18] 15 U.S.C. 78f(b)(8).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[22] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[23]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow Users that elect to receive wireless connections to both NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data to do so without delay at a reduced fee through the new bundle price. The Commission has therefore determined to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[25] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2016–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2016–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–49, and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17664 Filed 7–26–16; 8:45 am]

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[19] The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

[20] 15 U.S.C. 78s(b)(3)(a)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78397; File No. SR–NYSEArca–2015–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares

July 22, 2016.

I. Introduction

On November 6, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 8.600 and to adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 27, 2015.[3]

On November 23, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal in its entirety.[4] On January 4, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On January 21, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[7] The proposed rule change, as modified by Amendment No. 2 thereto, was published for comment in the **Federal Register** on February 1, 2016.[8] On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[9]

On February 12, 2016, the Exchange filed Amendment No. 4 to the proposed rule change.[10] On February 22, 2016, the Commission issued notice of Amendment No. 4 to the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act[11] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 4 thereto.[12] In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.[13] On May 20, 2016, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 4 thereto.[14]

On June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change.[15] On June 7, 2016, the Exchange filed Amendment No. 6 to the proposed rule change.[16] The proposed rule change, as modified by Amendment No. 6 thereto, was published for comment in the **Federal Register** on June 14, 2016.[17] On July 20, 2016, the Exchange filed Amendment No. 7 to the proposed rule change.[18] The Commission has received two comment letters on the proposal.[19] This order grants approval of the proposed rule change, as modified by Amendment No. 7 thereto.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76486 (Nov. 20, 2015), 80 FR 74169 (“Notice”).

[4] On January 21, 2016, the Exchange withdrew Amendment No. 1 to the proposed rule change.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 76819, 81 FR 987 (Jan. 8, 2016).

[7] In Amendment No. 2 to the proposed rule change, the Exchange added provisions to the generic listing criteria relating to non-U.S. Component Stocks, convertible securities, and listed swaps, among other changes. Amendment No. 2, which amended and replaced the Notice in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-3.pdf*.

[8] *See* Securities Exchange Act Release No. 76974 (Jan. 26, 2016), 81 FR 5149.

[9] In Amendment No. 3 to the proposed rule change, the Exchange (a) revised the provisions relating to convertible securities, (b) clarified the limitations on non-exchange-traded American Depositary Receipts, (c) eliminated redundant provisions relating to limitations on leveraged and inverse-leveraged Derivative Securities Products, (d) revised the provision relating to limitations on listed derivatives, (e) clarified that, for purposes of the limitations relating to listed and over-the-counter derivatives, a portfolio's investment in listed and over-the-counter derivatives will be calculated as the total absolute notional value of these derivatives, and (f) provided additional information regarding the statutory basis of the proposal. Amendment No. 3, which amended and replaced the proposed rule change, as modified by Amendment No. 2 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-4.pdf*.

[10] In Amendment No. 4 to the proposed rule change, the Exchange (a) modified the generic listing rules to require compliance of the standards applicable to underlying equity securities, fixed income securities, and over-the-counter derivatives on an initial and continuing basis; and (b) clarified that the limitations on listed derivatives would apply to all listed derivatives, including listed swaps. Amendment No. 4, which amended and replaced the proposed rule change, as modified by Amendment No. 3 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-5.pdf*.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] *See* Securities Exchange Act Release No. 77203, 81 FR 9900 (Feb. 26, 2016) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” *See id.*, 81 FR at 9908.

[13] *See id.*, 81 FR at 9908–09.

[14] *See* Securities Exchange Act Release No. 77872, 81 FR 33570 (May 26, 2016). The Commission designated July 22, 2016 as the date by which it should approve or disapprove the proposed rule change.

[15] In Amendment No. 5 to the proposed rule change, the Exchange (a) modified the definition of “normal market conditions” to reflect “systems failures” as an example of an operational issue that causes dissemination of inaccurate market information; (b) clarified that, with respect to the scope of equity securities components in Commentary .01(a) to NYSE Arca Equities Rule 8.600, the securities described in NYSE Arca Equities Rule 5.2(j)(3), NYSE Arca Equities Rule 5.2(j)(6), and Section 2 of NYSE Arca Equities Rule 8 also include securities listed on a different national securities exchange pursuant to substantially equivalent listing rules; (c) with respect to the provisions applicable to fixed income securities components, modified the concentration limitations by excluding U.S. Department of Treasury securities and government-sponsored entity securities, and clarified that the special purpose vehicle (“SPV”) that issues the fixed income security (*e.g.*, an asset-backed or mortgage-backed security) would itself be required to satisfy the $700 million and $1 billion thresholds set forth in Commentary .01(b)(4) to NYSE Arca Equities Rule 8.600, and not the entity that controls, owns, or is affiliated with the SPV; (d) clarified that the limitations imposed on derivatives holdings will be calculated as the total absolute notional value of the derivatives; (e) added a concentration limitation with respect to listed derivatives by requiring the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets to not exceed 65% of the weight of the portfolio (including notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset to not exceed 30% of the weight of the portfolio (including notional exposures); and (f) provided examples illustrating the application of certain of the generic listing standard requirements criteria of NYSE Arca Equities Rule 8.600. Amendment No. 5, which amended and replaced the proposed rule change, as modified by Amendment No. 4 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-6.pdf*.

[16] In Amendment No. 6 to the proposed rule change, the Exchange clarified that the limitations on derivatives as set forth in Commentaries .01(d), (e), and (f) to NYSE Arca Equities Rule 8.600 will be calculated as, and will be based on, the aggregate gross notional value of the derivatives. Amendment No. 6, which amended and replaced the proposed rule change, as modified by Amendment No. 5 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-7.pdf*.

[17] *See* Securities Exchange Act Release No. 78016 (Jun. 8, 2016), 81 FR 38759 (“Amendment No. 6 Notice”).

[18] In Amendment No. 7 to the proposed rule change, the Exchange added the following representations: (a) On a periodic basis and no less than annually, the Exchange will review issues of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 for compliance with NYSE Arca Equities Rule 8.600, and will provide a report to the Regulatory Oversight Committee of the Exchange's Board of Directors regarding the Exchange's findings; (b) the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Equities Rule 8.600:

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 and to adopt generic listing standards for Managed Fund Shares, which are securities issued by an open-end investment company. Unlike exchange-traded funds ("ETFs") whose performance is based on the performance of an underlying index of securities,[20] Managed Fund Shares generally use an active investment strategy to achieve their specific investment objectives.

According to the Exchange, all Managed Fund Shares listed and traded pursuant to NYSE Arca Equities Rule 8.600 (including trading pursuant to unlisted trading privileges) are subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange. In addition, NYSE Arca Equities Rule 8.600 currently requires that the Exchange submit a proposed rule change with the Commission to list and trade each new series of Managed Fund Shares on the Exchange.[21] The Exchange proposes to adopt "generic" listing standards that would allow the Exchange to approve the listing and trading of Managed Fund Shares that satisfy those generic listing standards pursuant to Rule 19b–4(e) under the Act.[22]

A. Generic Listing Standards for Managed Fund Shares

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 8.600 and adopt generic listing standards that would permit the listing and trading (including trading pursuant to unlisted trading privileges) of Managed Fund Shares pursuant to Rule 19b–4(e) under the Act, which pertains to new derivative securities products.[23] These generic listing standards are grouped according to underlying security or asset type. The Exchange also seeks to specify in Commentary .01 to NYSE Arca Equities Rule 8.600 that components of Managed Fund Shares listed pursuant to Rule 19b–4(e) under the Act must satisfy, on an initial and continued basis, certain specific criteria (as described below), and that the Exchange would continue to file separate proposed rule changes with the Commission before the listing and trading of Managed Fund Shares that do not satisfy the prescribed generic listing standards.[24]

1. Requirements Applicable to Equity Securities Components of the Portfolio

Commentary .01(a) to NYSE Arca Equities Rule 8.600 sets forth the standards for a Managed Fund Share portfolio holding equity securities, which are defined to be U.S. Component Stocks,[25] Non-U.S. Component Stocks,[26] Derivative Securities Products,[27] and Index-Linked Securities[28] listed on a national securities exchange.[29] For Derivative Securities Products and Index-Linked Securities, leveraged and inverse leveraged Derivative Securities Products or Index-Linked Securities can

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(1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with NYSE Arca Equities Rule 8.600; (c) prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer will be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if a series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). Because Amendment No. 7 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 7 is not subject to notice and comment. Amendment No. 7, which amended and replaced the proposed rule change, as modified by Amendment No. 6 thereto, in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

[19] *See* Letter from Kermit Kubitz to the Commission dated Jun. 30, 2016 (emphasizing the importance of the Exchange's monitoring program to determine continued compliance of series of Managed Fund Shares with the generic listing standards, supported by, for example, continued affirmation by issuers of Managed Fund Shares on a periodic basis that they are in compliance with the generic listing standards or if any deviations from the standards have occurred); and Letter from Rob Ivanoff to the Commission dated Nov. 22, 2015 (commenting that the format of the Exchange's proposed rule change was unclear and difficult to read, and suggesting a new format that would be easier to understand). All comments on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110.shtml.*

[20] For example, Investment Company Units listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3) are securities of index-based ETFs that seek to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[21] *See* Commentary .01 to NYSE Arca Equities Rule 8.600 (requiring the Exchange to file separate proposals under Section 19(b) of the Act before the listing and trading of shares of an issue of Managed Fund Shares).

[22] *See* 17 CFR 240.19b–4(e). Rule 19b–4(e) under the Act permits self-regulatory organizations ("SROs") to list and trade new derivative securities products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b). *See also* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (S7–13–98) (adopting Rule 19b–4(e) under the Act).

[23] Under Rule 19b–4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. *See* 17 CFR 240.19b–4(e). Rule 19b–4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by an SRO is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(c)(1). Under Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change, unless it is reasonably and fairly implied by an existing rule of the SRO.

[24] For example, according to the Exchange, if the portfolio components of a series of Managed Fund Shares exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading the Managed Fund Shares. Similarly, if the portfolio components of a series of Managed Fund Shares included a security or asset that is not specified in the generic listing criteria, the Exchange would file a separate proposed rule change.

[25] *See* Commentary .01(a) to NYSE Arca Equities Rule 8.600. The term "U.S. Component Stocks" is defined in NYSE Arca Equities Rule 5.2(j)(3) (defining U.S. Component Stock as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act). *See* NYSE Arca Equities Rule 5.2(j)(3).

[26] The term "Non-U.S. Component Stocks" is defined in NYSE Arca Equities Rule 5.2(j)(3) (defining Non-U.S. Component Stock as an equity security that is not registered under Sections 12(b) or 12(g) of the Act and that is issued by an entity that (a) is not organized, domiciled, or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives)). *See id.*

[27] For the purposes of Commentary .01, the term "Derivative Securities Products" would mean Investment Company Units and securities described in Section 2 of NYSE Arca Equities Rule 8 (*i.e.*, securities described in NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, 8.600, and 8.700).

[28] Index-Linked Securities are securities that qualify for Exchange listing and trading under NYSE Arca Equities Rule 5.2(j)(6).

[29] Commentary .01(a) clarifies that, with respect to the scope of securities included in the term "equity securities," the securities described in NYSE Arca Equities Rule 5.2(j)(3), NYSE Arca Equities Rule 5.2(j)(6), and Section 2 of NYSE Arca Equities Rule 8, as referenced above, include securities listed on a different national securities exchange pursuant to substantially equivalent listing rules.

constitute no more than 25% of the equity weight of the portfolio. In addition, Commentary .01(a) provides that, to the extent that a portfolio includes convertible securities, the equity security into which any such security is converted would be required to meet the criteria of Commentary .01(a) after converting.

As set forth in Commentary .01(a)(1) to NYSE Arca Equities Rule 8.600,[30] the component stocks of the equity portion of a portfolio that are U.S. Component Stocks must meet the following criteria initially and on a continuing basis:[31]

(a) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum market value of at least $75 million;

(b) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the previous six months;

(c) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 65% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(e) Except as provided in Commentary .01(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;[32] and

(f) American Depositary Receipts (''ADRs'') may be exchange-traded or non-exchange-traded; however, no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs.

As set forth in Commentary .01(a)(2) to NYSE Arca Equities Rule 8.600,[33] the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks must meet the following criteria initially and on a continuing basis:[34]

(a) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(c) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(e) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

2. Requirements Applicable to Fixed Income Securities Components of the Portfolio

Commentary .01(b) to NYSE Arca Equities Rule 8.600[35] sets forth standards for a Managed Fund Share portfolio that holds fixed income securities, which are defined to be debt securities[36] that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted would be required to meet the criteria of Commentary .01(b) after converting.

The components of the fixed income portion of a portfolio must meet the following criteria initially and on a continuing basis:[37]

(a) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(b) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) must not in the aggregate account for more than 65% of the fixed income weight of the portfolio;

(c) An underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers; provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a).

(d) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be: (i) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (ii) from issuers each of which has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (iii) from issuers each of which has outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion;[38] (iv) exempted securities as defined in Section 3(a)(12) of the Act; or (v) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

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[30] *See* Commentary .01(a)(1) to NYSE Arca Equities Rule 8.600.

[31] *See* Commentary .01(a)(1)(A)–(F) to NYSE Arca Equities Rule 8.600.

[32] *See* 17 CFR 240.600.

[33] *See* Commentary .01(a)(2) to NYSE Arca Equities Rule 8.600.

[34] *See* Commentary .01(a)(2)(A)–(E) to NYSE Arca Equities Rule 8.600.

[35] *See* Commentary .01(b) to NYSE Arca Equities Rule 8.600.

[36] According to the Exchange, debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities. *See* Order Instituting Proceedings, *supra* note 12, 81 FR at 9903 n.41.

[37] *See* Commentary .01(b)(1)–(5) to NYSE Arca Equities Rule 8.600.

(e) Non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

3. Requirements Relating to Cash and Cash Equivalents Components of the Portfolio

Commentary .01(c) to NYSE Arca Equities Rule 8.600[39] sets forth standards for a Managed Fund Share portfolio holding cash and cash equivalents. Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months and cash, and there would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments include the following:[40]

(a) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;

(b) Certificates of deposit issued against funds deposited in a bank or savings and loan association;

(c) Bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;

(d) Repurchase agreements and reverse repurchase agreements;

(e) Bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;

(f) Commercial paper, which are short-term unsecured promissory notes; and

(g) Money market funds.

4. Requirements Applicable to Listed Derivatives Components of the Portfolio

Commentary .01(d) to NYSE Arca Equities Rule 8.600[41] sets forth standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options, and swaps on commodities, currencies, and financial instruments (*e.g.*, stocks, fixed income securities, interest rates, and volatility) or a basket or index of any of the foregoing. There would be no limitation to the percentage of the portfolio invested in such holdings, but portfolio holdings would be subject to the following requirements:

(a) In the aggregate, at least 90% of the weight of holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement;[42] and

(b) The aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

5. Requirements Applicable to Over-the-Counter ("OTC") Derivatives Components of the Portfolio

Commentary .01(e) to NYSE Arca Equities Rule 8.600[43] sets forth standards for a Managed Fund Share portfolio that holds OTC derivatives, including forwards, options, and swaps on commodities, currencies, and financial instruments (*e.g.*, stocks, fixed income securities, interest rates, and volatility) or a basket or index of any of the foregoing. Commentary .01(e) requires that, on an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. The Exchange notes that, for purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

6. Requirements Applicable to Securities Underlying Derivatives Components

Commentary .01(f) to NYSE Arca Equities Rule 8.600[44] provides that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities or fixed income securities, or to indexes of equities or fixed income securities, the aggregate gross notional value of this exposure must meet the applicable criteria set forth in Commentaries .01(a) and .01(b) to NYSE Arca Equities Rule 8.600, respectively.[45]

B. Other Aspects of the Proposal

In addition to the generic listing standards applicable to Managed Fund Shares that satisfy those specific generic criteria, the Exchange also proposes to amend certain other aspects of NYSE Arca Equities Rule 8.600, which governs the listing and trading of all Managed Fund Shares.

1. Disclosed Portfolio

As part of the proposed rule change, the Exchange also proposes to amend NYSE Arca Equities Rule 8.600(c) to require that the Web site for all series of Managed Fund Shares, including Managed Fund Shares listed and traded on the Exchange pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, disclose certain additional information regarding the Disclosed Portfolio. The required information includes the following, to the extent applicable: Ticker symbol; CUSIP or other identifier; a description of the holding; with respect to holdings in derivatives, the identity of the security, commodity, index, or other asset upon which the derivative is based; the strike price for any options; the quantity of each security or other asset held as measured by select metrics (par value, notional value, number of shares, number of contracts, and number of units); maturity date; coupon rate; effective date; market value; and percentage weighting of the holding in the portfolio.[46]

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[38] The Exchange represents that, with respect to subparagraphs (ii) and (iii) of this provision in paragraph (d), the SPV that issues the fixed income security (*e.g.*, an asset-backed or mortgage-backed security) would itself be required to satisfy the $700 million and $1 billion criteria, respectively, and not the entity that controls, owns, or is affiliated with the SPV. *See* Amendment No. 5 to the proposed rule change, *supra* note 15.

[39] *See* Commentary .01(c) to NYSE Arca Equities Rule 8.600.

[40] *See* Commentary .01(c)(2)(i)–(vii) to NYSE Arca Equities Rule 8.600.

[41] *See* Commentary .01(d) to NYSE Arca Equities Rule 8.600.

[42] Commentary .01(d)(1) specifies that, for purposes of calculating the percentage limitations, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

[43] *See* Commentary .01(e) to NYSE Arca Equities Rule 8.600.

[44] *See* Commentary .01(f) to NYSE Arca Equities Rule 8.600.

[45] The Exchange provides examples illustrating the application of certain of the generic listing standard requirements criteria of NYSE Arca Equities Rule 8.600. *See* Amendment No. 6 Notice, *supra* note 17, 81 FR at 38764–65 (describing several portfolio scenarios and the method of calculating the holdings percentage limitations with respect to OTC derivatives and listed derivatives, among other securities).

2. Investment Objective

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 8.600(d) to specify that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.[47] NYSE Arca Equities Rule 8.600(c)(5) would specify that the term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.*, systems failure) causing dissemination of inaccurate market information; or *force majeure* type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.[48]

3. Portfolio Indicative Value

The Exchange seeks to amend the continued listing requirement in NYSE Arca Equities Rule 8.600(d)(2)(A) by changing the requirement that a Portfolio Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that the Portfolio Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).[49]

C. Additional Representations of the Exchange Applicable to the Listing and Trading of Managed Fund Shares

In support of the proposed rule change, the Exchange represents that:

(1) The Managed Fund Shares will continue to conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares.

(3) Prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Equity Trading Permit ("ETP") Holders in a Bulletin of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Managed Fund Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value and the Disclosed Portfolio, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the applicable registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

(4) The issuer of a series of Managed Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under NYSE Arca Equities Rule 5.3.

(5) The Exchange, on a periodic basis and no less than annually, will review issues of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 for compliance with NYSE Arca Equities Rule 8.600, and will provide a report to the Regulatory Oversight Committee of the Exchange's Board of Directors regarding the Exchange's findings. In addition, the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Equities Rule 8.600: (1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with NYSE Arca Equities Rule 8.600.

(6) Prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to amend Commentary .01 to NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares and to amend certain other provisions in NYSE Arca Equities Rule 8.600 applicable to the listing and trading of all Managed Fund Shares on the Exchange is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[50] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 7 thereto, is consistent with Section 6(b)(5) of the Act,[51] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange states that its proposed requirements for Managed Fund Shares are based in large part on the generic listing criteria currently applicable to Investment Company Units.[52] As a general matter, the Commission believes that this is an appropriate approach with respect to underlying asset classes covered by the existing generic standards, because the mere addition of active management to an ETF portfolio that would qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the ETF and its underlying portfolio. Below, the Commission addresses the proposed criteria for each of the asset classes encompassed within the generic listing standards.

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[46] *See* NYSE Arca Equities Rule 8.600(c)(2)(A)–(K).

[47] *See* NYSE Arca Equities Rule 8.600(d)(1)(C).

[48] *See* NYSE Arca Equities Rule 8.600(c)(5).

[49] *See* NYSE Arca Equities Rule 8.600(d)(2)(A).

[50] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78f(b)(5).

[52] *See id.* at 7–14. *See also supra* note 20.

Equity Holdings. With respect to the equity securities holdings of the underlying portfolio, the criteria closely track the existing standards for Investment Company Units with four relevant differences. First, while the generic listing criteria for Investment Company Units do not permit the inclusion of any non-exchange-traded ADRs in the underlying index,[53] the generic criteria for Managed Fund Shares permit an ETF to hold up to 10% of the equity weight of the portfolio in non-exchange-traded ADRs. This provision, however, is consistent with standards that the Commission has approved for specific ETFs listed and traded as Managed Fund Shares.[54] Moreover, the Commission believes that the requirement that at least 90% of the equity portion of a portfolio consist of domestic equity securities (a category that includes ADRs) for which the Exchange may obtain transaction data should both deter manipulation of generically listed Managed Fund Shares and permit the Exchange to investigate any instances of manipulation.

Second, the generic listing standards differ slightly from the existing generic standards for Investment Company Units with respect to Non-U.S. Component Stocks. The standards provide that *all* Non-U.S. Component Stocks in a Portfolio must have a minimum market value of at least $100 million. By contrast, the generic listing criterion for Investment Company Units requires only 90% of the Non-U.S. Component Stocks (excluding Derivative Securities Products) included in an index to meet the same minimum market-value threshold.[55] Additionally, under the proposal, *all* Non-U.S. Component Stocks included in a portfolio must have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the previous six months.[56] By contrast, only 70% of the weight of an index (excluding Derivative Securities Products) underlying generically listed Investment Company Units must satisfy the same monthly volume thresholds.[57] The Commission believes that these provisions should reduce the extent to which Managed Fund Shares holding Non-U.S. Component Stocks may be susceptible to manipulation.

Third, while the Exchange's existing generic listing standards for index-based ETFs do not apply concentration limits to an index's exposure to specified exchange-traded products (called "Derivative Securities Products"), which have concentration limits or price transparency requirements within their own listing standards, proposed Commentary .01(a) to NYSE Arca Rule 8.600 would also deem portfolio concentration limits not to apply to holdings of specified exchange-traded notes (called "Index-Linked Securities"). The Commission believes that this change should not increase the susceptibility of Managed Fund Shares to manipulation because Index-Linked Securities, like Derivative Securities Products, have asset-exposure concentration limits and requirements promoting price transparency within their own listing standards, and both Derivative Securities Products and Index-Linked Securities are listed and traded on national securities exchanges (which are all members of ISG), publicly provide information about listed Derivative Securities Products and Index-Linked Securities, including price and other information relating to the underlying index or reference asset, as the case may be, and provide trading and price information and other quantitative date for investors and other market participants.

And fourth, under current generic listing standards, index-based ETFs cannot seek inverse returns greater than 300% of the performance of their reference index, and there is no limit on positive leverage versus an index. By contrast, the proposed standards would impose an absolute cap—25%—on the amount of an ETF's portfolio that could be invested in leveraged or inverse-leveraged exchange-traded products. The Commission believes that a limitation on the overall use of leveraged exchange-traded products is consistent with Section 6(b)(5) of the Act because it will limit the extent to which the performance of a generically listed, actively managed ETF can be tied to a product whose performance over periods of longer than one day can differ significantly from its stated daily performance objective.[58]

Fixed Income Holdings. With respect to the fixed income securities components of a portfolio, the generic listing standards for Managed Fund Shares are based in large part on the existing generic listing standards of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) applicable to components of fixed income securities indexes underlying Investment Company Units,[59] with three relevant differences. First, Commentary .01(b)(3) to NYSE Arca Equities Rule 8.600 does not require a minimum number of non-affiliated issuers for fixed income securities in the portfolio if at least 70% of the weight of the portfolio consists of equity securities as set forth in Commentary .01(a) to NYSE Arca Equities Rule 8.600. Second, Commentary .01(b)(5) to NYSE Arca Equities Rule 8.600 prohibits non-agency, non-GSE, and privately issued mortgage-related and other asset-backed securities components of a portfolio from constituting, in the aggregate, more than 20% of the weight of the fixed income portion of the portfolio.[60] And third, the standards make explicit that convertible bonds both (a) have to meet the criteria for fixed-income holdings and (b) be convertible into equities that would meet the criteria for equity holdings.

The Commission believes that, taken together, the requirements for the fixed income portion of the portfolio are reasonably designed to ensure that a substantial portion of the portfolio consists of fixed income securities for which information is publicly available, and, when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of Managed Fund Shares that are sufficiently broad-based to minimize the potential for manipulation. The Commission also believes that these provisions should help to ensure that the fixed income securities portion of a portfolio consists of assets for which available intra-day values allow market participants to identify and capitalize upon arbitrage opportunities, which in turn should help keep the intra-day prices of generically listed Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

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[53] The Commission notes, however, that a portfolio of a series of Investment Company Units nevertheless may contain non-exchange-listed ADRs because the Investment Company Unit portfolio need not consist only of components of the index underlying the series of Investment Company Units.

[54] *See, e.g.,* Securities Exchange Act Release No. 72679 (July 28, 2014), 79 FR 44878 (Aug. 1, 2014) (SR–NYSEArca–2014–71); Securities Exchange Act Release No. 67277 (June 27, 2012), 77 FR 39554 (July 3, 2012) (SR–NYSEArca–2012–39).

[55] *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)(a)(B)(1).

[56] The Commission approved a listing rule that contained these heightened market capitalization and trading volume requirements. *See* Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR–NYSEArca–2014–100).

[57] *See* Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)(a)(B)(2).

[58] *Cf.* SEC Invester Alert, Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors, available at *https://www.sec.gov/investor/pubs/leveragedetfs-alert.htm.*

[59] *See* Amendment No. 7, *supra* note 18, at 12–14.

[60] The Commission notes that it has approved listing and trading rules for specific ETFs listed as Managed Fund Shares that limit holdings of non-agency asset-backed securities to 20% of the value of the fund's portfolio. *See, e.g.,* Securities Exchange Act Release No. 74297 (Feb. 18, 2015), 80 FR 9788 (Feb. 24, 2015) (SR–BATS–2014–056); Securities Exchange Act Release No. 75566 (July 30, 2015), 80 FR 46612 (Aug. 5, 2015) (SR–NYSEArca–2015–42).

Cash and Cash Equivalents. With respect to cash and cash equivalents to be held in a portfolio, the Commission believes that the proposed standards appropriately define the type of short-term instruments that would qualify as such holdings.

Derivatives Holdings. With respect to derivatives of any type included in the portfolio, Commentary .01(f) to NYSE Arca Equities Rule 8.600 provides that, to the extent they are used to gain exposure to individual equities or fixed income securities, or to indexes of equities or fixed income securities, the total notional exposure to the underlying instruments—whether achieved through cash instruments or derivative instruments—must meet the numerical and other criteria set forth in Commentaries .01(a) and .01(b) to NYSE Arca Equities Rule 8.600, as applicable. The Commission believes that this provision should make the portfolios less susceptible to manipulation by preventing circumvention of the quantitative and other requirements applicable to equity and fixed income security components of a portfolio.

With respect to listed derivatives under Commentary .01(d) to NYSE Arca Equities Rule 8.600, the generic criterion allows a generically listed ETF to use listed derivatives to achieve 100% of its portfolio exposure, provided that, in the aggregate, at least 90% of the weight of the holdings in futures, exchange-traded options, and listed swaps consists of futures, options, and swaps for which (1) the Exchange may obtain information from other ISG members or affiliate members, or (2) the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement.[61] Additionally, the Exchange represents that it (or the Financial Industry Regulatory Authority, Inc. on its behalf) will communicate regarding and obtain trade information as needed for the underlying exchange-listed instruments whose principal market is either an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement in place.[62] The Commission believes that these provisions should both deter potential manipulation and permit the Exchange to investigate suspected manipulation of generically listed Managed Fund Shares that use listed derivatives. Moreover, the Commission believes that the price transparency of listed derivatives should enable market participants to identify and execute arbitrage strategies that will tend to equalize the market price of generically listed Managed Fund Shares with the value of the underlying portfolios. The Commission also notes that Commentary .01(d)(2) to NYSE Arca Equities Rule 8.600 imposes concentration limits on the use of listed derivatives. The Commission believes that this limitation should make Portfolios that contain listed derivatives less susceptible to manipulation.[63]

With respect to OTC derivatives, Commentary .01(e) to NYSE Arca Equities Rule 8.600 permits the portfolio to include OTC derivatives, but would limit the amount of these derivatives to 20% of the fund's assets in the portfolio, thereby ensuring that the preponderance of a fund's investments would not be in derivatives that are not listed and centrally cleared. The Commission believes that this limitation is sufficient to mitigate the risks associated with price manipulation because at least 80% of a Managed Fund Shares portfolio would consist of: Cash and cash equivalents; listed derivatives, of which 90% by portfolio weight would be traded on a principal market that is a member of ISG; and equity securities or fixed income instruments subject to numerous restrictions designed to prevent manipulation and ensure pricing transparency. The Commission notes that, for purposes of calculating this 20% limitation on OTC derivatives holdings, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.[64]

The Commission further notes that, in addition to the listing criteria described above for specific underlying asset classes, the Exchange has committed to conduct an ongoing compliance review of the ETFs that are generically listed as Managed Fund Shares. Specifically, the Exchange has represented that, no less than annually, it will review the Managed Fund Shares generically listed and traded on the Exchange under NYSE Arca Equities Rule 8.600 for compliance with that rule and will provide a report to its Regulatory Oversight Committee presenting the findings of its review. The Exchange has also committed to provide, on a quarterly basis, a report to the Commission staff that contains, for each ETF whose shares are generically listed and traded under Commentary .01 to NYSE Arca Equities Rule 8.600: (a) The symbol and date of listing; (b) the number of active authorized participants and a description of any failure by either a fund or an authorized participant to deliver promised baskets of shares, cash, or cash and instruments in connection with creation or redemption orders; and (c) a description of any failure by an ETF to comply with NYSE Arca Equities Rule 8.600.[65] The Commission believes that the quarterly report provided by the Exchange will assist the Commission in using public data to review the trading characteristics of ETFs listed under these generic standards.[66]

The Commission also notes that, prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[67] If a series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).[68]

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[61] *See* Amendment No. 7, *supra* note 18, at 23–24. The Exchange also states that: (1) A fund's investments in derivatives, including listed derivatives, would be subject to limits on leverage imposed by the Investment Company Act of 1940 ("1940 Act"); (2) to limit the potential risk associated with a fund's use of derivatives, a fund will segregate or "earmark" assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments; and (3) a fund's investments would be consistent with its investment objective and would not be used to enhance leverage. *See id.* at 24.

[62] *See id.* at 27.

[63] Commentary .01(d)(2) to NYSE Arca Equities Rule 8.600 requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

[64] *See* Commentary .01(e) to NYSE Arca Equities Rule 8.600.

[65] *See* Amendment No. 7, *supra* note 18, at 19.

[66] The Commission also notes that all Managed Fund Shares listed pursuant to NYSE Arca Equities Rule 8.600, including generically listed Managed Fund Shares, are included within the definition of "security" or "securities" as those terms are used in the Exchange Rules. *See* NYSE Arca Equities Rule 8.600(b). Accordingly, Managed Fund Shares are subject to the full set of rules and procedures that govern the trading of securities on the Exchange. *See* Amendment No. 7, *supra* note 18, at 5 and 26.

[67] The Commission notes that another proposal relating to the generic listing and trading of

The Commission believes that the Managed Fund Shares generic listing criteria, taken together, should promote the listing only of Managed Fund Shares that are not susceptible to manipulation. Additionally, the generic listing standards as a whole should ensure that the underlying portfolios are composed predominantly of securities and instruments for which available intra-day values allow market participants to identify and capitalize upon arbitrage opportunities, which in turn should help keep the intra-day prices of generically listed Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

For the reasons discussed above, the Commission finds that the generic listing standards for Managed Fund Shares are consistent with Section 6(b)(5) of the Act.[69]

In addition, the Exchange amends certain requirements of NYSE Arca Equities Rule 8.600 that apply to *all* Managed Fund Shares (*i.e.,* both fund shares listed generically under the proposed standards and fund shares listed pursuant to filings by the Exchange under Section 19(b)(1) of the Act and Rule 19b–4 thereunder). Specifically, the Exchange specifies the information that must be included in the Disclosed Portfolio disseminated by each actively managed ETF. Previously approved listing rules for specific ETFs listed as Managed Fund Shares have included identical disclosure requirements.[70] The mandatory disclosures include information that market participants can use to value an actively managed ETF's holdings intra-day, which should facilitate arbitrage opportunities that should help keep the intra-day prices of Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

The Exchange also amends the continued listing requirement in NYSE Arca Equities Rule 8.600(d)(2)(A), which is applicable to all Managed Fund Shares, to require dissemination of the Portfolio Indicative Value at least every 15 seconds during the Core Trading Session, as defined in NYSE Arca Equities Rule 7.34. The Commission believes that this requirement is consistent with the intraday indicative value dissemination requirement for Investment Company Units,[71] as well as with the representations made in support of approved proposals to list and trade shares of other series of Managed Fund Shares.[72]

Finally, the Exchange adds as an initial listing criterion applicable to all Managed Fund Shares (including those that are generically listed) the requirement that Managed Fund Shares must have a stated investment objective, which shall be adhered to under "Normal Market Conditions," defined as circumstances including, but not limited to, the absence of: Trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or systems failure; or *force majeure* type events, such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.[73] The Commission believes that this proposed change is consistent with previous Commission approvals of specific ETFs listed as Managed Fund Shares.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 7 thereto, is consistent with Section 6(b)(5) of the Act[74] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[75] that the proposed rule change (SR–NYSEArca–2015–110), as modified by Amendment No. 7 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Brent J. Fields,

Secretary.

[FR Doc. 2016–17825 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78377; File No. SR–NYSEArca–2016–99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 11, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the "Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") to add additional wireless connections and update or remove obsolete text. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

Managed Fund Shares includes a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[68] *See* Amendment No. 7, *supra* note 18, at 19.

[69] 15 U.S.C. 78f(b)(5).

[70] *See, e.g.,* Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122).

[71] *See, e.g.,* Commentary .01(c) and Commentary .02(c) to NYSE Arca Equities Rule 5.2(j)(3) (currently requiring the index-based ETF's intraday indicative value to be disseminated at least every 15 seconds only during the Core Trading Session of the Exchange).

[72] *See* Amendment No. 7, *supra* note 18, at 20–21.

[73] *See* NYSE Arca Equities Rule 8.600(c)(5). *See also* NYSE Arca Equities Rule 8.600(d)(1)(C).

[74] 15 U.S.C. 78f(b)(5).

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's co-location[4] services include the means for Users[5] to receive market data feeds from third party markets ("Third Party Data") through a wireless connection.[6] The Exchange currently offers wireless connectivity to six Third Party Data feeds.[7] The Exchange proposes to amend the Fee Schedules to (a) expand the existing wireless connections to Bats Pitch BZX Gig shaped data ("BZX") and DirectEdge EDGX Gig shaped data ("EDGX") to include additional market data feeds, and (b) provide a wireless connection to NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data. The Exchange also proposes to update or remove obsolete text.

More specifically, the Exchange proposes to amend the connections to BZX and EDGX as follows:

- The wireless connection to BZX data would also include Bats Pitch BYX Gig shaped data ("BYX"), and
- the wireless connection to EDGX data would also include Bats EDGA Gig shaped data ("EDGA").

The related fees would not change.

Any User that presently has a wireless connection to BZX or EDGX data would also receive BYX or EDGA data, respectively, upon effectiveness of the proposed change. Such User would not be required to pay a second non-recurring initial charge.

In addition, the Exchange proposes to add a seventh Third Party Data feed, which would include NASDAQ TotalView Ultra (FPGA) and BX TotalView-ITCH data ("FPGA and TotalView-ITCH"). Both such data feeds are currently offered separately. For each wireless connection to FPGA and TotalView-ITCH, a User would be charged a $5,000 non-recurring initial charge and a monthly recurring charge ("MRC") of $14,500.

Any User that presently has a wireless connection to the separate FPGA and TotalView-ITCH feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change. Such User would not be required to pay another non-recurring initial charge.

The Exchange accordingly proposes to revise the Fee Schedules to include the following:

Description	Amount of charge
Wireless connection of Bats Pitch BZX Gig shaped data and Bats Pitch BYX Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of Bats EDGX Gig shaped data and Bats EDGA Gig shaped data.	$5,000 per connection initial charge plus monthly charge per connection of $6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless connection of NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data.	$5,000 per connection initial charge plus monthly charge per connection of $14,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

As with all the Third Party Data, the Exchange would utilize a network vendor to provide a wireless connection to BZX and BYX, EDGX and EDGA or FPGA and TotalView-ITCH data (together, the "Additional Third Party Data") through wireless connections from an Exchange access center to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment. A User that wished to receive Additional Third Party Data would enter into a contract with the relevant third party provider, which would charge the User the applicable market data fees. The Exchange would charge the User fees for the wireless connection.[8]

As with the previously approved wireless connections to Third Party Data, if a User purchases two wireless connections to Additional Third Party Data, it pays two non-recurring initial charges. Wireless connections include the use of one port for connectivity to Third Party Data.[9] As with the previously approved wireless connections to Third Party Data, the Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of Additional Third Party Data for a month before incurring any MRCs.

The Exchange proposes to offer the wireless connections to provide Users with an alternative means of connectivity to Additional Third Party

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[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE MKT LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR–NYSEArca–2015–99) ("Wireless Approval Release").

[7] *See* Securities Exchange Act Release No. 77118 (February 11, 2016), 81 FR 8265 (February 18, 2016) (SR–NYSEArca–2016–04).

[8] A User only receives the Third Party Data for which it enters into a contract with the third party provider. If a User requested not to be connected to one of the Third Party Data feeds (for example, if it entered into a contract with BATS for BZX but not BYX, or for EDGA but not EDGX), the Exchange would only provide the wireless connection requested, but would charge the User the full $5000 initial fee, plus $6000/monthly fee for the wireless connection.

[9] A User only requires one port to connect to the Third Party Data, irrespective of how many of the wireless connections it orders. It may, however, purchase additional ports. *See* Wireless Approval Release, *supra* note 6, at 81641.

Data. Currently, Users can receive such Third Party Data from wireless networks offered by third party vendors.[10] Users may also receive connections to Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.[11]

The proposed connectivity to the FPGA and TotalView-ITCH data feeds would be available upon effectiveness. The proposed connectivity to the BZX and BYX or EDGX and EDGA data feeds is expected to be available no later than September 1, 2016. The Exchange will announce the date that the wireless connections will be made available through a customer notice.

In addition, the Exchange proposes to replace the existing references to "DirectEdge" and "BATS" in the Fee Schedules with references to "Bats" in order to reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively.[12]

Finally, the Exchange proposes to delete statements in the Fee Schedules that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, as such statements are obsolete. This proposed change would have no impact on pricing.

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [13] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[14]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(4) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed service is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposed changes would provide Users with an alternative means of connectivity to the Additional Third Party Data. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain the Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections to Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive Additional Third Party Data, allowing a User that opts to receive such Additional Third Party Data to select the connectivity and number of ports that better suit its needs, helping it tailor its data center operations to the requirements of its business operations.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select wireless connections to Additional Third Party Data would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

Overall, the Exchange believes that the proposed change is reasonable because the Exchange proposes to offer the wireless connections to described herein as a convenience to Users, but in doing so would incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network.

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[10] Currently, at least six third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

[11] The IP network is a local area network available in the data center. *See* Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 77298 (March 4, 2016), 81 FR 12757 (March 10, 2016) (SR–EDGX–2016–04) (notice of filing and immediate effectiveness of proposed rule change to reflect a legal name change by BATS Global Markets, Inc. and the legal names of certain subsidiaries).

[13] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[14] *See* SR–NYSEArca–2013–80, *supra* note 5 at 50459. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–49 and SR–NYSEMKT–2016–70.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable not to charge a User a second non-recurring initial charge if it has a wireless connection to BZX or EDGX data as of the date of effectiveness of the proposed change, because such User would have already paid a non-recurring initial charge for the wireless connection to BZX or EDGX data that it already has. The Exchange believes that it is reasonable that a User that presently has a wireless connection to the separate FPGA and TotalView-ITCH feeds would become subject to the $14,500 MRC upon effectiveness of the proposed change, because such User would have the same service as a User that obtained wireless connectivity to the FPGA and TotalView-ITCH feeds after effectiveness. Similarly, the Exchange believes that it is reasonable that such a User would not be required to pay another non-recurring initial charge, because such User would have already paid non-recurring initial charges for the two wireless connections that it already has.

The Exchange believes that it is reasonable that a User that has already purchased wireless connections to other Third Party Data would be charged a non-recurring initial charge when it purchases a wireless connection to Additional Third Party Data, because the Exchange would incur certain costs in installing the wireless connection to such Third Party Data irrespective of whether the User had existing wireless connections to other Third Party Data. Such costs related to initial installation include, in particular, costs related to personnel required for initial installation and testing. The costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions.

The Exchange believes that the proposed pricing is reasonable because it allows Users to select the Additional Third Party Data connectivity option that better suits their needs. The fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. For competitive reasons, the Exchange has opted not to change the existing fees for the BZX and EDGX Third Party Data feeds. Accordingly, Users that already receive the BZX or EDGX Third Party Data feed will receive an additional feed at no incremental cost.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed for a month before incurring any monthly recurring fees and may act as an incentive to Users to connect to Additional Third Party Data.

Moreover, the Exchange believes that the proposed fees are equitably allocated and not unfairly discriminatory because the wireless connections to Additional Third Party Data would provide Users with an alternative means of connectivity to such feeds. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for Additional Third Party Data would receive the Additional Third Party Data that is available to all Users, as all market participants that contract with the relevant third party market for the Additional Third Party Data may receive it.

The Exchange believes that deleting statements in the Fee Schedules that say that the wireless connections for Third Party Data are expected to be available no later than March 1, 2016, is reasonable, equitable and not unfairly discriminatory because the reference is obsolete and no longer has an impact on pricing. The Exchange also believes that replacing the existing references to "DirectEdge" and "BATS" in the Fee Schedules with references to "Bats" is reasonable, equitable and not unfairly discriminatory, because it will reflect the recent name changes of BATS Exchange, Inc. and EDGX Exchange, Inc. to Bats BZX Exchange, Inc. and Bats EDGX Exchange, Inc., respectively. The proposed changes would result in the removal or update of obsolete text from the Fee Schedules and therefore add greater clarity to the Fee Schedules regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that the proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will provide Users with wireless connectivity to additional Third Party Data feeds. Currently, Users can receive Additional Third Party Data from wireless networks offered by third party vendors. Based on the information available to it, the Exchange believes that its proposed wireless connection would provide data at the same or similar speed and at the same or similar cost as the other wireless networks. Accordingly, the proposed wireless connections to Additional Third Party Data would provide Users with an additional wireless connectivity option, thereby enhancing competition.

The Exchange notes that the proposed wireless connections to Additional Third Party Data would compete not just with other wireless connections to such Additional Third Party Data, but also with fiber optic network connections to Additional Third Party Data, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize wireless connections would be able to obtain Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network. In this way, the proposed changes would enhance competition by helping Users tailor their connectivity to Additional Third Party Data to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive such Additional Third Party Data that best suits their needs, helping them tailor their data center operations to the requirements of their business operations.

The proposed wireless connections to Additional Third Party Data would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center. The wireless network has exclusive rights to operate wireless equipment on the data center pole. The Exchange will not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users. Based on the information available to it, the Exchange believes that its proposed wireless connections to Additional Third Party Data would provide data at the same or similar speed, and at the same or similar cost, as its proposed wireless connection, thereby enhancing competition.[19]

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[18] 15 U.S.C. 78f(b)(8).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[22] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[23]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow Users that elect to receive wireless connections to both NASDAQ Totalview Ultra (FPGA) and BX Totalview-ITCH data to do so without delay at a reduced fee through the new bundle price. The Commission has therefore determined to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[25] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2016–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2016–99. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–99, and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17663 Filed 7–26–16; 8:45 am]

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[19] The Exchange notes that the distance of a wireless network provider's wireless equipment from the User is only one factor in determining overall latency. Other factors include the number of repeaters in the route, the number of switches the data has to travel through, and the millimeter wave and switch technology used.

[20] 15 U.S.C. 78s(b)(3)(a)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78388; File No. SR–NYSEArca–2016–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment Nos. 1 and 2, Establishing Fees Relating to End Users and Amending the Definition of "Affiliate," as well as Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the NYSE Arca Options Fee Schedule To Reflect the Changes

July 21, 2016.

I. Introduction

On April 4, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the co-location section of the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the NYSE Arca Options Fee Schedule to establish fees relating to end users of certain co-location Users in the Exchange's data center and to amend the definition of "Affiliate." The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5] On June 8, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 21, 2016.[6] On June 24, 2016, the Exchange filed Amendment No. 2 to the proposed rule change. [7]

The Commission is publishing this order to solicit comments on Amendment No. 2 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[8] Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment Nos. 1 and 2, and on the issues presented by the proposal.

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to establish certain fees relating to end users. Specifically, the Exchange proposes to amend the co-location section of the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services and the NYSE Arca Options Fee Schedule (collectively "Fee Schedules") to (i) add the newly defined terms "Rebroadcasting User" and "Multicast End User;" as well as "Transmittal User" and "Unicast End User;" (ii) amend the definition of Affiliate; (iii) establish new reporting requirements applicable to Rebroadcasting Users and Transmittal Users; (iv) establish new fees applicable to Rebroadcasting Users and Transmittal Users; and (v) make certain related technical changes.[9]

The Exchange operates a data center in Mahwah, New Jersey ("data center") from which it provides co-location services to Users.[10] The Exchange states that in the data center, information flows over existing network connections in two formats: multicast and unicast. Multicast is a format in which information is sent one-way from the Exchange to multiple recipients at once, similar to a radio broadcast, and is currently employed for the transmission of market data.[11] Users receiving market data through the multicast format can retransmit that data to their customers.[12] Unicast format is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange.[13]

Rebroadcasting Users/Multicast End Users

The Exchange proposes to add several new definitions to the Fee Schedules. The Exchange proposes to define a "Rebroadcasting User" as "a User that rebroadcasts to its customers data received from the Exchange in multicast format, unless such User normalizes the raw market data before sending it to its customers." [14] The Exchange also proposes to define "Multicast End User" as "a customer of a Rebroadcasting User, or a customer of a Rebroadcasting User's Multicast End User customer, to whom the Rebroadcasting User or its Multicast End User sends data received from the Exchange in multicast format, other than an Affiliate of the Rebroadcasting User." [15] The Exchange notes that a Multicast End User may be, but is not required to be, a User or a Hosted Customer, and also that a customer of a Rebroadcasting User would be considered a Multicast End User, irrespective of whether it receives the data from a Rebroadcasting User or another Multicast End User.[16] Accordingly, as proposed, a Multicast End User is a recipient of raw Exchange market data that (i) originated from (but may not have been provided directly by) a User, provided such recipient is not an Affiliate of the originating User.[17]

In addition, as originally proposed, the Exchange would assess a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77641 (April 18, 2016), 81 FR 23773 ("Notice").

[4] Amendment No. 1 makes technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedules. Because Amendment No. 1 is technical, the Commission is not soliciting comment thereon.

[5] The Commission received two comment letters on a companion filing, NYSE–2016–11 (the "NYSE companion filing"), filed by the Exchange's affiliate, the New York Stock Exchange LLC ("NYSE"). *See* Letter from Michael Friedman, General Counsel and Chief Compliance Officer, Trillium, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 13, 2016 ("Friedman Letter"), and Letter from Eero Pikat to Brent J. Fields, Secretary, Securities and Exchange Commission, dated, May 13, 2016 ("Pikat Letter") (together, the "Comment Letters").

In response to the Comment Letters, the NYSE submitted a response ("Response Letter") and filed Amendment No. 2 to the NYSE companion filing. As they are relevant to the instant filing, the Comment Letters and Response Letter on the NYSE companion filing are discussed below.

[6] *See* Securities Exchange Act Release No. 34-77977 (June 2, 2016), 81 FR 36967.

[7] As more fully described below, in Amendment No. 2 the Exchange proposes that Rebroadcasting Users and Transmittal Users would not be charged for their first two Multicast End Users and Unicast End Users, respectively, and offers additional support for the proposal. Amendment No. 2 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nysearca-2016-19/nysearca201619-2.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Notice, *supra* note 3, 81 FR at 23773; *see also* Amendment No. 1, *supra* note 4.

[10] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange.

[11] *See* Notice, *supra* note 3, 81 FR at 23773.

[12] *See id.*

[13] *See id.*

[14] *See id.* at 23774. Pursuant to the definition, the term "Rebroadcasting User" would exclude a User that "normalizes" (*i.e.*, alters) raw market data before sending it a Multicast End User. The definition of Rebroadcasting User also would not apply to a User that rebroadcasts third party data, because that data is not received from the Exchange. *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

Rebroadcasting User with one or two connections, either directly or through another Multicast End User, to a Multicast End User, a $1,700 monthly charge for the first two connections, and $850 for each additional connection to that Multicast End User.[18] To assess the proposed fees accurately, a Rebroadcasting User would be required to report to the Exchange on a monthly basis the number of its Multicast End Users, and the number of connections it has to each.[19] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Rebroadcasting User would not be assessed a fee for its first two Multicast End Users.[20]

Transmittal Users/Unicast End Users

According to the Exchange, customers use unicast format to send messages related to orders or for clearing purposes.[21] A User may enable one or more of its customers to transmit messages in unicast format to and from the Exchange.[22] The Exchange proposes to define a "Transmittal User" as a User that enables its customers, or the customers of its customers, to transmit messages to and from the Exchange using the unicast format.[23] A "Unicast End User" would be a customer of a Transmittal User, or a customer of a Transmittal User's Unicast End User customer, for whom the Transmittal User or its Unicast End User customer enables the transmission of messages to and from the Exchange in unicast format, other than a customer that (a) is an Affiliate of the Transmittal User or (b) sends all unicast transmissions through a floor participant, such as a floor broker.[24] Customers of a Transmittal User that send all unicast transmissions through a floor participant, such as a floor broker, would not be considered a Unicast End User even if such customer is enabled to use unicast format.[25] A Unicast End User may also enable one or more of their customers to transmit messages to and from the Unicast End User and thus such customers would also be considered a Unicast End User.[26] To assess the proposed fees accurately, a Transmittal User would be required to report to the Exchange on a monthly basis the number of its Unicast End Users, and the number of connections it has to each.[27]

As originally proposed, the Exchange would assess a Transmittal User with one or two connections, either directly or through another Unicast End User, to a Unicast End User, a $1,500 monthly charge for the first two connections,[28] and $750 for each additional connection to that Unicast End User.[29] As noted, there would be no charge to a Transmittal User for its connection to a customer submitting orders through a unicast connection to a floor participant.[30] As more fully discussed below, in Amendment No. 2, the Exchange proposes that a Transmittal User would not be charged the proposed fee for its first two Unicast End Users.[31]

Definition of Affiliate

The Exchange also proposes that the terms Multicast End User and Unicast End User would exclude an entity that is an Affiliate of its Rebroadcasting User or Transmittal User, respectively.[32] The Exchange proposes to amend its current definition of an Affiliate.[33] Under the new definition, an "Affiliate" of a User would be any other User or Hosted Customer that is under common control with, controls, or is controlled by, the first User, provided that: (1) An "Affiliate" of a Rebroadcasting User is any Multicast End User that is under common control with, controls, or is controlled by the Rebroadcasting User; and (2) an "Affiliate" of a Transmittal User is any Unicast End User that is under common control with, controls, or is controlled by the Transmittal User.[34] For purposes of this definition, "control" means ownership or control of 50% or greater.[35] The purpose of the amendment is to provide that an "Affiliate" relationship exists whenever two entities are under common control, regardless of which entity controls the other.[36]

Exchange Support for Rebroadcasting Users/Transmittal User Fees

In its filing, the Exchange states that the proposed fees relate to additional connectivity and co-location services the Exchange provides to Rebroadcasting and Transmittal Users and would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users." [37] According to the Exchange, in the absence of the proposed end user fees, "no charges would be assessed related to the benefit that Multicast End Users and Unicast End Users receive from the services through the Rebroadcasting or Transmittal User from whom they receive data, and the Rebroadcasting or Transmittal Users would thus receive disproportionate benefits." [38]

The Exchange represents that it incurs more costs on the account of Rebroadcasting and Transmittal Users; [39] some of these costs being indirect, including overhead and technology infrastructure, administrative, maintenance and operational costs,[40] and others being in form of direct network support.[41] Additionally, the Exchange notes that it has established automated retransmission facilities for Users to receive multicast transmissions.[42]

As noted, the Commission received two comment letters on the NYSE companion filing, which are likewise applicable to this filing.[43] These commenters expressed concern about the effect of the Rebroadcasting User fees that would be passed on to them as Multicast End Users consuming Exchange market data. One of these commenters states that it should not have to pay fees to help support the co-location infrastructure because it is not co-located.[44] This commenter states that for compliance purposes, a registered broker-dealer has no choice but to "consume depth-of-book market data" and that if the proposed fee is passed through, the commenter will have no choice but to accept it.[45] The other commenter states that the proposal provides "no evidence to support [the Exchange's] claim that its costs are higher to support the customers of subvendors."[46] This commenter states that the fees are "assigned only to vendors' customers who buy data from [the Exchange's] competitors" and is "[b]y definition . . . anti-competitive."[47] According to this commenter, the fees are introduced "solely for the purpose of protecting market data revenue."[48]

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[18] *See id.*

[19] *See id.* at 23775–76.

[20] *See* Amendment No. 2, *supra* note 7.

[21] *See* Notice, *supra* note 3, 81 FR at 23774.

[22] *See id.* For example, a User that is a service bureau or extranet may use such connections to facilitate order routing and clearing by its customers. *See id.*

[23] *See id.*

[24] *See id.* A Unicast End User may be a User or a Hosted Customer. *See id.*

[25] *See id.*

[26] *See id.* The Exchange notes that it is not aware of any customer of a Unicast End User that enables its customers to transmit messages, but if such a relationship did exist, the customer would also be considered a Unicast End User. *See id.*

[27] *See id.* at 23775–76.

[28] *See id.* at 23774.

[29] *See id.*

[30] *See supra* note 25 and accompanying text.

[31] *See* Amendment No. 2, *supra* note 7.

[32] *See id.* at 23774. Users excluding Affiliates from their list of Multicast End Users or Unicast End Users may be required to certify to the Exchange the Affiliate status of such end user. *See* Notice, *supra* note 3, 81 FR at 23776. The Exchange may ask Users that are neither Rebroadcasting Users or Transmittal Users to certify their status as ordinary Users. *See id.*

[33] *See* Notice, *supra* note 3, 81 FR at 23774–75.

[34] *See id.* at 23775.

[35] *See id.*

[36] *See id.*

[37] *See id.* at 23776.

[38] *See id.*

[39] *See id.*

[40] *See id.* at 23777. The Exchange notes, that it has made network infrastructure improvements over the years and established administrative controls. *See id.*

[41] *See id.* The Exchange states that when an issue arises, the Exchange and Rebroadcasting User or Transmittal User conduct a review to determine the cause of an issue, with the participation of the relevant Multicast or Unicast End User. The Exchange states that when the User is a Rebroadcasting User or Transmittal User, identifying the issue and providing the needed network support becomes more complicated because each of the entities involved has its own infrastructure and administration. By contrast, for Affiliates, the Exchange states that they typically act as one entity, with one infrastructure, one administration, and one network support group, making the network support effectively similar to supporting one entity. *See id.*

[42] *See id.*

[43] *See supra* note 5.

In the Response Letter, the NYSE states that the Comment Letters have "not provided any credible argument why the [. . .] proposal is not consistent with the requirements of the Act."[49] The NYSE emphasizes that the proposal "compares the support the Exchange provides to Rebroadcasting Users to the support required by Users that are not Rebroadcasting Users,"[50] and states that the proposal will not impact market data revenue.[51] The NYSE states that "a market participant has additional options outside of co-location for connecting to Exchange market data" and that the commenters "ignor[e] the basic fact that the Exchange voluntarily allows Rebroadcasting Users to provide services out of the Exchange's co-location facility."[52] The NYSE further argues that it "would be illogical to argue . . . that just because Rebroadcasting Users provide services that overlap with services offered by the Exchange, the Exchange cannot charge the Rebroadcasting Users for the Exchange's services."[53] The NYSE states that it "generally provides more direct support to Rebroadcasting Users than other Users" and highlights the fact that a larger Rebroadcasting User made "between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar number of cabinets."[54]

Amendment No. 2

In Amendment No. 2, the Exchange offers additional justification for the proposed rule change. In Amendment No. 2, the Exchange proposes that a Rebroadcasting User not be charged a fee for its first two Multicast End Users, and similarly that a Transmittal User not be charged a fee for its first two Unicast End Users.[55] The Exchange states that it reviewed customer calls for assistance between June 1, 2015 and June 7, 2016, and compared the number of calls by Users it believes to be Rebroadcasting Users to the number of calls by a representative sample of other Users.[56] Consistent with the NYSE statements in the Response Letter, the Exchange states that "a comparison of calls by the larger Rebroadcasting User showed that the larger Rebroadcasting User made between 3.8 and 4.25 times as many calls as Users with similar power usage, and 4.25 to 8.5 times as many calls as Users with similar numbers of cabinets. Indeed, such Rebroadcasting User made 20 more calls than the five largest Users combined."[57]

The Exchange adds that it believes that Rebroadcasting Users that have only one or two Multicast End Users are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users.[58] The Exchange further states that it does not have visibility into the number of Unicast End Users that individual Transmittal Users have, but believes that it is reasonable to extrapolate that a Transmittal User that has only one or two Unicast End Users may not need more network support than other Users.[59] Accordingly, the Exchange believes it is reasonable to not charge a Transmittal User a fee for its first two Unicast End Users.[60] Finally, the Exchange states that its proposal is analogous to the Nasdaq Stock Market's Extranet Access Fee.[61]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–NYSEArca–2016–19 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[62] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"[63]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"[64] and

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[44] *See* Friedman Letter, *supra* note 5, at 1–2.

[45] *See id.* at 1–3.

[46] *See* Pikat Letter, *supra* note 5, at 1.

[47] *See id.*

[48] *See id.*

[49] *See* Response Letter, *supra* note 5, at 3.

[50] *See id.* at 7.

[51] *See id.* at 4.

[52] *See id.* at 6.

[53] *See id.* The Exchange also argues that "Rebroadcasting Users are not direct competitors of the Exchange's co-location services . . . [since] for example, the Exchange does not provide Users with hardware such as routers or switches, and does not offer managed services." *See id.*

[54] *See* Response Letter, *supra* note 5, at 7–8. The NYSE also states that its proposed fees follow a similar example set by the Nasdaq Stock Market's Extranet Access Fee. *See id.* at 9.

[55] *See* Amendment No. 2, *supra* note 7.

[56] *See id.*

[57] *See* Response Letter, *supra* note 5, at 8; *see also* Amendment No. 2, *supra* note 7.

[58] *See* Amendment No. 2, *supra* note 7.

[59] *See id.*

[60] *See id.*

[61] The Exchange cites Nasdaq Stock Market Rule 7025 and Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR–NASDAQ–2015–003), and states: "Extranet providers that establish a connection with Nasdaq to offer direct access connectivity to market data feeds are assessed a monthly access fee of $1,000 per recipient Customer Premises Equipment ("CPE") Configuration. A CPE Configuration is any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Nasdaq market data feeds to a recipient's site. No extranet access fee is charged for connectivity to market data feeds containing only consolidated data.)." *See id.*

[62] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." [65]

As discussed above, the Exchange states that the proposed end user fees applicable to Rebroadcasting Users and Transmittal Users would "fairly and equitably allocate the costs associated with maintaining the Data Center facility, hardware and equipment and related to personnel required for installation and ongoing monitoring, support and maintenance of such service among all Users." [66] Although the Exchange notes that it has expended a variety of resources in connection with the support of Rebroadcasting Users and Transmittal Users, such as technology infrastructure, maintenance and operational costs, it does not explain—with one exception—how those expenditures do not equally benefit all Users.[67] The Exchange does take the position that it "generally provides more direct support to Rebroadcasting Users and Transmittal Users than other Users, typically in the form of network support" and that "[b]ased on its experience . . . when the User is a Rebroadcasting User or Transmittal User, pinpointing the issue and providing the needed network support becomes more difficult because each entity involved has its own infrastructure and administration." [68] The only evidence the Exchange provides in support of its assertion, however, is call log data showing that a single large Rebroadcasting User made substantially more customer assistance calls to the Exchange than other Users over a certain period.[69] The Commission is concerned that such data may not be sufficient to demonstrate that the proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act. In addition, to the extent the Exchange is focused on more directly recovering the costs of network support, it has not explained why it has not proposed to do so more precisely, such as by imposing a fee per customer service call, rather than by targeting a subset of customers of co-located Users regardless of their network support needs.

Furthermore, the proposed fees would not apply to all end users of Rebroadcasting Users and Transmittal Users. For example, they would not apply to end users that are Affiliates of a Rebroadcasting User or a Transmittal User. While the Exchange asserts that "[i]n its experience, entities that are Affiliates typically act as one entity, with one infrastructure, one administration, and one network support group," so that "the Exchange is effectively supporting one entity, irrespective of how many Affiliate end users are involved," [70] the Exchange provides no evidence to support its implication that Rebroadcasting Users and Transmittal Users with Affiliate end users require less Exchange resources than those with non-Affiliate end users. In addition, the proposed fees would not apply with respect to the first two end users of a Rebroadcasting User or a Transmittal User.[71] While the Exchange expresses its belief that, "based on the information available to it, Rebroadcasting Users [or Transmittal Users] that have only one or two [end users] are an exception to the general statement that the Exchange has a greater administrative burden and incurs greater operational costs to support Rebroadcasting Users [or Transmittal Users]," [72] it offers no evidence in support of this belief. Finally, the proposed fees would not apply to Unicast End Users that send all unicast transmissions through a floor participant, such as a floor broker. In this case, the Exchange does not justify the exception on the basis of the Exchange resources required to support this type of end user, but rather because it "would encourage sending orders to Floor brokers for execution, thereby encouraging displayed liquidity" and "promoting public price discovery . . . which benefits all market participants." [73] The Exchange, however, provides no evidence to support the proposition that Unicast End Users submitting all of their orders through floor brokers provide more displayed liquidity or otherwise improve the market quality of the Exchange more than other types of Unicast End Users. Accordingly, the Commission is concerned that the Exchange has not demonstrated that the exceptions to its proposed new end user fees are reasonable, equitably allocated and not unfairly discriminatory, as required by the Act.

Finally, the Commission is concerned that the Exchange has not demonstrated that its proposal does not impose an unnecessary or inappropriate burden on competition. The Exchange asserts that it meets this statutory standard because "it operates in a highly-competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange." [74] In response to a commenter's concern that the proposal could have an anti-competitive impact on vendors and their customers, the Exchange takes the position that Rebroadcasting Users like vendors "are not direct competitors of the Exchange's co-location services," because "[w]hile both offer connectivity to Exchange market data, Rebroadcasting Users provide their customers services that the Exchange's co-location service does not," such as hardware (*e.g.,* routers and switches) and fully-managed services.[75] The Exchange, however, does not clearly explain why the imposition of additional per-customer fees on co-located vendors and other redistributors of market data and connectivity services is not an unnecessary or inappropriate burden on competition with the Exchange's direct offering of such products, even if those redistributors offer other ancillary services.

For all of the foregoing reasons, the Commission believes that questions are raised as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; and not impose an unnecessary or inappropriate burden on competition.[76]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment Nos. 1 and 2. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by

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[65] 15 U.S.C. 78f(b)(8).

[66] *See* note 37 *supra* and accompanying text.

[67] *See* Notice, *supra* note 3, 81 FR at 23777.

[68] *See id.*

[69] *See* Amendment No. 2, *supra* note 7.

[70] *See* Notice, *supra* note 3, 81 FR at 23777.

[71] *See* Amendment No. 2, *supra* note 7.

[72] *See id.*

[73] *See* Notice, *supra* note 3, 81 FR at 23778.

[74] *See id.* at 23779. The Exchange cites several additional justifications that closely mirror those, noted above, that support its assertion that its proposed fees are reasonable, equitably allocated and not unfairly discriminatory.

[75] *See* Response Letter, *supra* note 5, at 6.

[76] 15 U.S.C. 78f(b)(4), (b)(5), and (b)(8).

Amendment Nos. 1 and 2, is consistent with Sections 6(b)(4), (5), or (8)[77] or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[78] any request for an opportunity to make an oral presentation.[79]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment Nos. 1 and 2, should be approved or disapproved by August 17, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 31, 2016. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Amendment Nos. 1 and 2, as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(4), (5) and (8),[80] or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, as modified by Amendment Nos. 1 and 2, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–19, and should be submitted by August 17, 2016. Rebuttal comments should be submitted by August 31, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17674 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78390; File No. SR–BOX–2016–33]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to make changes to Section I (Exchange Fees for Non-Auction Transactions) on the BOX Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make changes to Section I (Exchange Fees for Non-Auction Transactions).

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[77] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[78] 17 CFR 240.19b–4.

[79] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[80] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[81] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Exchange Fees for Non-Auction Transactions

The Exchange proposes to adjust certain fees for Non-Auction Transactions. Currently, for all non-auction transactions, fees and credits are assessed depending upon three factors: (i) The account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party. Non-Auction Transactions in Penny Pilot Classes are assessed different fees or credits than Non-Auction Transactions in Non-Penny Pilot Classes.

The current fees for Non-Auction Transactions are:

Account type	Contra party	Penny pilot classes		Non-penny pilot classes	
		Maker fee	Taker fee	Maker fee	Taker fee
Public Customer	Public Customer	$0.00	$0.00	$0.00	$0.00
	Professional Customer/Broker Dealer	0.00	0.00	0.00	0.00
	Market Maker	0.00	0.00	0.00	0.00
Professional Customer or Broker Dealer.	Public Customer	0.60	0.50	0.95	1.07
	Professional Customer/Broker Dealer	0.25	0.40	0.35	0.40
	Market Maker	0.25	0.44	0.35	0.44
Market Maker	Public Customer	0.51	0.50	0.85	1.03
	Professional Customer/Broker Dealer	0.00	0.05	0.00	0.10
	Market Maker	0.00	0.29	0.00	0.29

First, the Exchange proposes to raise the fees assessed for Public Customers that make or take liquidity against all account types in in both Penny and Non-Penny Classes to $0.05 from $0.00.

Next, the Exchange proposes to adjust the fees assessed for Professional Customers and Broker Dealers. In Penny Pilot Classes, the Exchange proposes to adjust the fees assessed for Professional Customers and Broker Dealers that take liquidity from all other Participants. Specifically, the Exchange proposes to lower the fee assessed to Professional Customers and Broker Dealers that take liquidity from Public Customers to $0.45 from $0.50. Further, the Exchange proposes to increase the fees assessed to Professional Customers and Broker Dealers that take liquidity from Professional Customers/Broker Dealers and Market Makers to $0.45 from $0.40 and $0.44, respectively. Additionally, the Exchange proposes to lower the fees assessed for Professional Customers and Broker Dealers making liquidity against Professional Customers and Broker Dealers and Market Makers in Penny Pilot Classes to $0.05 from $0.25. For Non-Penny Pilot Classes, the Exchange proposes to reduce the fees assessed for Professional Customers and Broker Dealers making liquidity against Non-Public Customers to $0.05 from $0.35. The Exchange also proposes to decrease the fees assessed for Professional Customers and Broker Dealers taking liquidity from Public Customers to $0.85 from $1.07. Lastly, with regard to Professional Customers/Broker Dealers taking liquidity from Professional Customers/Broker Dealers and Market Makers in Non-Penny Pilot Classes, the Exchange proposes to increase the fees assessed to $0.60 from $0.40 and $0.44, respectively.

The Exchange then proposes to adjust the fees assessed for Market Makers in Non-Auction Transactions. First, the Exchange proposes to decrease the fees assessed on Market Makers making liquidity against a Public Customer to $0.27 from $0.51. With regard to Market Makers taking liquidity against Public Customers in Penny Pilot Classes, the Exchange proposes to decrease the fee to $0.43 from $0.50. Further, the Exchange proposes to increase the fee for Market Makers taking liquidity against Professional Customers and Broker Dealers in Penny Pilot Classes to $0.29 from $0.05. Lastly, the Exchange proposes to adjust the fees assessed to Market Makers in Non-Penny Pilot Classes. Specifically, the Exchange proposes to decrease the fee assessed to a Market Maker when making liquidity from a Public Customer in Non-Penny Pilot Classes to $0.65 from $0.85. In Non-Penny Pilot Classes, the Exchange proposes to decrease the fee assessed to Market Makers taking liquidity from a Public Customer to $0.80 from $1.03. Lastly, the Exchange proposes to increase the fees assessed to Market Makers taking liquidity from Professional Customers/Broker Dealers and Market Makers in Non-Penny Pilot Classes, to $0.40 from $0.10 and $0.29, respectively.

The fees for Non-Auction Transactions will be as follows:

Account type	Contra party	Penny pilot classes		Non-penny pilot classes	
		Maker fee	Taker fee	Maker fee	Taker fee
Public Customer	Public Customer	$0.05	$0.05	$0.05	$0.05
	Professional Customer/Broker Dealer	0.05	0.05	0.05	0.05
	Market Maker	0.05	0.05	0.05	0.05
Professional Customer or Broker Dealer.	Public Customer	0.60	0.45	0.95	0.85
	Professional Customer/Broker Dealer	0.05	0.45	0.05	0.60
	Market Maker	0.05	0.45	0.05	0.60
Market Maker	Public Customer	0.27	0.43	0.65	0.80
	Professional Customer/Broker Dealer	0.00	0.29	0.00	0.40
	Market Maker	0.00	0.29	0.00	0.40

Tiered Volume Rebate for Non-Auction Transactions

The Exchange proposes to amend Section I.A.1. of the BOX Fee Schedule, Tiered Volume Rebate for Non-Auction Transactions. Specifically, the Exchange proposes to specify that transactions in which a Public Customer is a contra party will be considered exempt from the Tiered Volume Rebate for Market Makers in Non-Auction Transactions.[5] Additionally, the Exchange proposes to adjust certain rebates for Customers and Market Makers in Non-Auction Transactions. Specifically, for the Tiered Volume Rebate for Market Makers in Non-Auction Transactions, the Exchange proposes to increase the maker rebate in Tier 3 to $0.07 from $0.05, and also increase the maker rebate in Tier 4 to $0.15 from $0.10.

The Exchange also proposes to adjust the rebates in the Tiered Volume Rebate for Public Customers in Non Auction Transactions. The current Tiered Volume Rebate for Public Customers in Non-Auction Transactions is as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contact rebate			
		Penny pilot classes		Non-penny pilot classes	
		Maker	Taker	Maker	Taker
1	0.000%–0.129%	$0.00	$0.00	$0.00	$0.00
2	0.130%–0.339%	(0.15)	(0.15)	(0.40)	(0.40)
3	0.340%–0.549%	(0.25)	(0.25)	(0.50)	(0.50)
4	0.550% and Above	(0.40)	(0.40)	(0.90)	(0.70)

Specifically, the Exchange proposes to reduce each of the maker and taker rebates in Tiers 2 through 4 of the Tiered Volume Rebate structure for Public Customers in both Penny Pilot Classes and Non-Penny Pilot Classes. The new per contract rebate for Public Customers in Non-Auction Transactions as set forth in Section I.A.1. of the BOX Fee Schedule will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contact rebate			
		Penny pilot classes		Non-penny pilot classes	
		Maker	Taker	Maker	Taker
1	0.000%–0.129%	$0.00	$0.00	$0.00	$0.00
2	0.130%–0.339%	(0.05)	(0.05)	(0.20)	(0.20)
3	0.340%–0.549%	(0.15)	(0.15)	(0.30)	(0.30)
4	0.550% and Above	(0.25)	(0.25)	(0.50)	(0.50)

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. Further, the Exchange operates within a highly competitive market in which market participants can readily direct order flow to any other competing exchange if they determine fees at a particular exchange to be excessive.

Non-Auction Transactions

The Exchange believes it is equitable, reasonable and not unfairly discriminatory to assess fees according to the account type of the Participant originating the order and the contra party. This fee structure has been in place on the Exchange since 2014 and the Exchange is simply adjusting certain fees within the structure.[7] The result of this structure is that a Participant does not know the fee it will be charged when submitting certain orders. Therefore, the Participant must recognize that it could be charged the highest applicable fee on the Exchange's schedule, which may, instead, be lowered depending upon how the order interacts.

The Exchange believes raising the non-auction transaction fees for Public Customers making or taking liquidity in Penny and Non-Penny Pilot Classes to $0.05 from $0.00 is reasonable, equitable and not unfairly discriminatory. While the Exchange proposes to slightly raise the fees assessed to Public Customers for Non-Auction Transactions, the Public Customers may still receive the benefit of a volume based rebate, which in turn could offset the proposed $0.05 fee.[8] Further, the Exchange notes that a higher fee of $0.07 was assessed for Public Customers in Non-Auction transactions on BOX in the past.[9]

The Exchange believes that the proposed fees for Professional

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[5] As is the case today, Non-Auction Transactions that are not a result of a Market Maker quote will continue to be exempt from the Market Maker tiered volume rebate.

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *See* Securities Exchange Release No. 73547 (November 6, 2014), 79 FR 67520 (November 13, 2014)(Notice of Filing and Immediate Effectiveness SR–BOX–2014–25).

[8] The Exchange notes that on a monthly basis, most Public Customers on the Exchange reach one of these volume based rebate tiers.

[9] *See* Securities Exchange Release No. 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (Notice of Filing and Immediate Effectiveness SR–BOX–2012–002).

Customers and Broker Dealers in Non-Auction Transactions are reasonable. Under the proposed fee structure, a Professional Customer or Broker Dealer making liquidity and interacting with a Professional Customer, Broker Dealer or Market Marker will now be charged a fee of $0.05 in both Penny and Non-Penny Pilot Classes. If the Professional Customer or Broker Dealer is instead taking liquidity in the Penny Pilot, it will be charged $0.45 against any other Participant. If the Professional Customer or Broker Dealer is taking liquidity in the Non-Penny Pilot, it will be charged $0.85 if it interacts with a Public Customer or $0.60 if it interacts with a Professional Customer, Broker Dealer or a Market Maker. The Exchange believes that reducing the fee for making liquidity will promote liquidity on the Exchange, ultimately benefitting all Participants trading on BOX. Further, the Exchange believes the proposed fees are reasonable as they are in line with the current fees assessed by another competing exchange.[10]

The Exchange believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for most of their Non-Auction Transactions is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts. The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources, which the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for transactions.

The Exchange notes that Professional Customers or Broker Dealers will now be charged the same rate as Public Customers when making liquidity against Professional Customers, Broker Dealers, and Market Makers in both Penny and Non-Penny Pilot Classes. The Exchange believes it is equitable and not unfairly discriminatory to assess the same low rate for these transactions on both Public Customers and Professional Customers/Broker Dealers to promote liquidity on the Exchange, ultimately benefitting all Participants trading on BOX. Further, the Exchange notes that Public Customers have the ability to achieve a rebate for their Non-Auction transactions, and Professional Customer or Broker Dealers do not.

The Exchange believes that the proposed fees for Market Makers in Non-Auction Transactions are reasonable. With the proposed fee changes, a Market Maker making liquidity will now be charged a lower fee of $0.27 (Penny Pilot) and $0.65 (Non-Penny Pilot) for interacting with a Public Customer. Further, a Market Maker taking liquidity against a Public Customer will now be charged a lower fee of $0.43 in Penny Pilot Classes and a lower fee of $0.80 in Non-Penny Pilot Classes. If a Market Maker is taking liquidity in Penny and Non-Penny Pilot Classes and interacts with a Professional Customer, Broker Dealer or a Market Maker, they will now be charged a fee of $0.29 in Penny Pilot Classes and $0.40 in Non-Penny Pilot Classes. The Exchange believes the fees listed above are reasonable and appropriate as they are in line with what is currently charged by the industry.[11]

Further, the Exchange believes it is equitable and not unfairly discriminatory to charge the Market Maker less for making or taking liquidity than Professional Customers or Broker Dealers. Specifically, Market Makers have certain obligations that other Participants do not and can ultimately provide more value by directing liquidity to the Exchange, which the Exchange believes will benefit all Participants trading on BOX.

Additionally, the Exchange believes that charging Market Makers who interact with Professional Customers/Broker Dealers and Market Makers in Penny and Non-Penny Pilot Classes less than Public Customers is reasonable. As discussed above, Market Makers have certain obligations that Public Customers do not and can provide value by directing more liquidity to the Exchange. The Exchange believes that charging Market Makers no fee for adding liquidity against Professional Customers, Broker Dealers and Market Makers will promote liquidity on the Exchange, ultimately benefitting all market participants. Further, the Exchange believes that charging Market Makers less than Public Customers when adding liquidity is reasonable, as other exchanges in the industry also treat Market Makers more favorably than a Public Customer for adding liquidity.[12] Finally, the Exchange notes that Public Customers have the ability to obtain a higher per contract rebate than Market Makers under the Tiered Volume Rebates for Non-Auction Transactions.[13]

The Exchange believes it is reasonable, equitable and not unfairly discriminatory for Professional Customers, Broker Dealers and Market Makers to be charged higher fees when interacting with Public Customers than interacting with other Participants on BOX. The Exchange believes they are reasonable as they are in a similar range with the fees in the options industry.[14] Further, as stated above, the Exchange believes charging a higher fee for interactions with a Public Customer when compared to interactions with other Participants is equitable and not unfairly discriminatory because it allows the Exchange to incentivize Public Customer order flow by offering low fees and rebate potential to Public Customers in Non-Auction Transactions. The Exchange believes that providing these incentives for Non-Auction Transactions by Public Customers will benefit all Participants trading on the Exchange by attracting this Public Customer order flow.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory that Professional Customers, Broker Dealers and Market Makers be charged a higher fee for certain orders removing liquidity, when compared to the fee they receive for orders that add liquidity. Charging a lower fee for orders that add liquidity will promote liquidity on the Exchange and ultimately benefit all participants on BOX. Further, the concept of incentivizing orders that add liquidity over orders that remove liquidity is commonly accepted within the industry as part of the "Make/Take" liquidity model.

Finally, the Exchange also believes it is reasonable to charge Professional Customers and Broker Dealers and Market Makers less for certain executions in Penny Pilot issues compared to Non-Penny Pilot issues because these classes are typically more actively traded; assessing lower fees will further incentivize order flow in Penny Pilot issues on the Exchange, ultimately benefiting all Participants trading on BOX.

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[10] *See* International Securities Exchange ("ISE") Schedule of Fees, Section I. On ISE, Professional Customer and Broker Dealers in Penny Pilot Classes are charged a fee of $0.10 when making liquidity and a $0.45 fee when taking liquidity. *See also* NYSE Arca Options ("Arca") Fees and Charges page 4. On Arca a Firm or Broker Dealer is charged $0.50 when making liquidity and $1.08 when taking liquidity in Non-Penny Pilot Issues, and $0.50 for taking liquidity in Penny Pilot Issues.

[11] *Id.* On ISE and Arca, the general range for Market Maker fees is between $0.10 and $1.08.

[12] *See* Arca Fees and Charges page 4. On Arca, a Market Maker making liquidity in Penny Pilot Classes receives a rebate of $0.28 where a Public Customer making liquidity in Penny Pilot Classes receives a lower rebate of $0.25. *See also* C2 Options Exchange. Incorporated ("C2") Fee Schedule Section 1. Similar to Arca, Market Makers on C2 who are making liquidity in Penny Pilot Classes receive a rebate of $0.40 where Public Customers making liquidity in Penny Pilot Classes receive a lower rebate of $0.37.

[13] Under the proposed Tiered Volume Rebates in Section I.A.1 Public Customers can receive a maximum per contract rebate of up to $0.25 for Penny Pilot Classes and $0.50 in Non-Penny Pilot Classes. Market Makers can only receive a maximum rebate of $0.15, regardless of class.

[14] *See supra* note 6 [sic].

Tiered Volume Rebate for Non-Auction Transactions

BOX believes it is reasonable, equitable and not unfairly discriminatory to adjust certain rebates in the volume based thresholds for Market Makers and Public Customers in all Non-Auction Transactions. The volume thresholds and applicable rebates are meant to incentivize Public Customers and Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. Other exchanges employ similar incentive programs;[15] and the Exchange believes that the proposed changes to the volume thresholds and rebates are reasonable and competitive when compared to incentive structures at other exchanges.

With regard to the Public Customer Tiered Volume Rebate for Non-Auction Transactions, the Exchange believes it is reasonable to offer a higher per contract rebate for transactions in Non-Penny Pilot Classes compared to Penny Pilot Classes because Non-Penny Pilot Classes are typically less actively traded and have wider spreads. The Exchange believes that offering a higher rebate will incentivize Public Customer order flow in Non-Penny Pilot issues on the Exchange, ultimately benefitting all Participants trading on BOX.

The Exchange believes it is reasonable to increase the rebates in Tiers 3 and 4 of the Tiered Volume Rebate for Market Makers making liquidity in Non-Auction Transactions. The rebates are meant to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange.

The Exchange continues to believe it is equitable and not unfairly discriminatory to only have these rebate structures for Public Customers and Market Makers in Non-Auction transactions. The practice of incentivizing increased Public Customer and Market Maker order flow is common in the options markets. While the Exchange proposes to decrease the Public Customer rebates in Penny and Non-Penny Pilot Classes, the Exchange believes that Public Customers will still benefit from the opportunity to obtain a rebate. As discussed above, most Public Customers currently achieve a volume based rebate in their Non-Auction transactions, which will offset any exchange fees they are assessed in Section I.A of the BOX Fee Schedule. Additionally, the Exchange believes that Market Makers can provide high volumes of liquidity and lowering certain Market Maker Non-Auction Transaction fees and raising certain maker rebates in the Tiered Volume Rebates for Market Makers in Non-Auction Transactions will potentially help attract a higher level of Market Maker order flow and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX.

Lastly, the Exchange believes that exempting transactions where a Public Customer is a contra party from the Market Maker Tiered Volume Rebate is reasonable, equitable and not unfairly discriminatory. BOX provides these volume based rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. The Exchange believes by providing a rebate to transactions that do not have a Public Customer as the contra party will further encourage Market Makers to quote. Further, the Exchange believes that Public Customer interaction does not need further encouragement within the BOX fee schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed adjustments to fees in the Non-Auction Transactions fee structure will not impose a burden on competition among various Exchange Participants. Rather, BOX believes that the changes will result in the Participants being charged appropriately for these transactions and are designed to enhance competition in Non-Auction transactions on BOX. Submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for order flow.

The Exchange believes that amending the proposed rebate structure for Customer and Market Maker Non-Auction Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result in Customers and Market Makers being rebated appropriately for these transactions. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for order flow.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[16] and Rule 19b–4(f)(2) thereunder,[17] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[15] *See* Section B of the PHLX Pricing Schedule entitled "Customer Rebate Program;" ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP). CBOE's Volume Incentive Program ("VIP") pays certain tiered rebates to Trading Permit Holders for electronically executed multiply-listed option orders which include AIM orders.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–33, and should be submitted on or before August 17,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17676 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78385; File No. SR–NASDAQ–2016–103]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Exchange-Traded Managed Funds

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 14, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares ("NextShares")) the common shares ("Shares") of the exchange-traded managed funds described herein (each, a "Fund," and collectively, the "Funds").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.[3] Each Fund listed below will be advised by an investment adviser registered under the Investment Advisers Act of 1940 ("Adviser"), as described below. Each Fund will be actively managed and will pursue various principal investment strategies, as noted below.[4]

Ivy NextShares™

Ivy NextShares™ (the "Trust") is registered with the Commission as an open-end investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[5] Each of the following Funds is a series of the Trust.[6]

Ivy Investment Management Company ("IICO" or the "Adviser") will be the adviser to the Funds. IICO is not a registered broker-dealer, although it is affiliated with a broker-dealer. IICO has implemented a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to each Fund's portfolio.[7] In the future event

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34–73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–2014–020).

[4] Additional information regarding the Funds will be available on one of two free public Web sites (*www.ivyinvestments.com* or *www.nextshares.com*, as indicated more fully below), as well as in the Registration Statement for the Funds.

[5] *See* Registration Statement on Form N–1A for the Trust dated April 18, 2016 (File Nos. 333–210814 and 811–23155).

[6] The Commission has issued an order granting the Trust and certain affiliates exemptive relief under the Investment Company Act. *See* Investment Company Act Release No. 31816 (Sept. 9, 2015) (File No. 812–14526).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an

Continued

that (a) IICO registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

ALPS Distributors, Inc. will be the principal underwriter and distributor of each Fund's Shares. Waddell & Reed Services Company, doing business as WI Services Company ("WISC"), will act as the administrator and accounting agent to the Funds. State Street Bank and Trust Company ("State Street") will act as the custodian and transfer agent to the Funds. In addition, it has entered into agreements with WISC pursuant to which State Street will serve as sub-administrator and sub-accounting agent to the Funds.

Ivy Focused Growth NextShares™

The investment objective of this Fund is to provide growth of capital. The Fund normally will invest primarily in a portfolio of common stocks issued by large-capitalization, growth-oriented companies with above-average levels of profitability and that IICO believes have the ability to sustain growth over the long term. Although the Fund primarily will invest in securities issued by large-capitalization companies (defined as companies with market capitalizations of at least $10 billion at the time of acquisition), it may invest in securities issued by companies of any size.

Ivy Focused Value NextShares™

The investment objective of this Fund is to provide capital appreciation, with a secondary objective of providing current income. The Fund normally will invest in the common stocks of companies that IICO believes are undervalued, trading at a significant discount relative to the intrinsic value of the company as estimated by IICO and/or are out of favor in the financial markets but have a favorable outlook for capital appreciation. Although the Fund will often invest in securities issued by large-capitalization companies (defined as companies with market capitalizations of at least $10 billion at the time of acquisition), it may invest in securities issued by companies of any size.

Ivy Energy NextShares™

The investment objective of this Fund is to provide capital growth and appreciation. The Fund will invest, under normal circumstances, at least 80% of its net assets in the common stock of companies within the energy sector, which includes all aspects of the energy industry, such as exploration, discovery, production, distribution or infrastructure of energy and/or alternative energy sources.

Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis for each Fund at the Fund's next-determined net asset value ("NAV")[8] in specified blocks of Shares called "Creation Units." A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through "Authorized Participants."[9] Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with a Fund.

The creation and redemption process for Funds may be effected "in kind," in cash, or in a combination of securities and cash. Creation "in kind" means that an Authorized Participant—usually a brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.[10]

Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free Web site.[11] Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will

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investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] As with other registered open-end investment companies, NAV generally will be calculated daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m. E.T. NAV will be calculated by dividing a Fund's net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund's NAV will be contained in the Registration Statement for its Shares.

[9] "Authorized Participants" will be either: (1) "participating parties," *i.e.*, brokers or other participants in the Continuous Net Settlement System ("CNS System") of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (2) DTC participants, which in either case have executed participant agreements with the Funds' distributor and transfer agent regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.

[10] In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust's application for exemptive relief under the Investment Company Act states that each Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a) ("Securities Act").

[11] The free Web site containing the Composition File will be *www.nextshares.com*.

not include any of the securities in the Fund's portfolio.[12]

Transaction Fees

All persons purchasing or redeeming Creation Units of a Fund are expected to incur a transaction fee to cover the estimated cost to that Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (*i.e.,* brokerage commissions, bid-ask spread and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units. The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees will differ among Funds and may vary over time for a given Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. Funds that specify greater amounts of cash in their Composition File may impose higher transaction fees. In addition, Funds that include in their Composition File instruments that clear through DTC may impose higher transaction fees than Funds whose Composition File consists solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.[13] The transaction fees applicable to each Fund's purchases and redemptions on a given business day will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free Web site.[14] In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to a Fund's next-determined NAV using a new trading protocol called "NAV-Based Trading."[15] All bids, offers and execution prices of Shares will be expressed as a premium/discount (which may be zero) to a Fund's next-determined NAV (*e.g.,* NAV-$0.01, NAV+$0.01). A Fund's NAV will be determined each business day, normally as of 4:00 p.m. E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

Trading Premiums and Discounts

Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. Funds with higher transaction fees may trade at wider premiums or discounts to NAV than other Funds with lower transaction fees, reflecting the added costs to market makers of managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, the Funds will maintain a public Web site that will be updated on a daily basis to show current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.[16]

Transmitting and Processing Orders

Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[17] In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.,* NAV-$0.01 would be represented as 99.99; NAV+$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices of Shares that are made available to the investing public follow the "NAV-$0.01/NAV+$0.01" (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are designed to supplement the market information disseminated through the consolidated tape ("Consolidated Tape"). Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the "NAV-$0.01/NAV+$0.01" (or similar) display format. Member firms could use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the "NAV-$0.01/

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[12] In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

[13] Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of ETFs (the "NSCC Process") to purchase and redeem Creation Units of Funds that limit the composition of their baskets to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

[14] The free Web site will be *www.nextshares.com.*

[15] Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by NextShares Solutions LLC ("NextShares Solutions"), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq has entered into a license agreement with NextShares Solutions to allow for NAV-Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with NextShares Solutions.

[16] The Web site containing this information will be *www.ivyinvestments.com.*

[17] As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

NAV+$0.01'' (or similar) display format. Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (*e.g.*, Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV-$0.01/NAV+$0.01'' (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

Intraday Reporting of Quotes and Trades

All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape[18] and separately disseminated to member firms and market data services through the Exchange data feeds listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.[19]

Final Trade Pricing, Reporting and Settlement

All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of such Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.[20] After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in other exchange-traded securities.

Availability of Information

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public Web site through which the current prospectus for each Fund may be downloaded.[21] In addition, a separate Web site (*www.nextshares.com*) will include additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the ''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the ''Closing Bid/Ask Spread.''). The Web site at *www.nextshares.com* will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site as noted above.[22] Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms participating in the trade contemporaneous with execution. Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each business day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service (''MFQS'') by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the value to market participants and market data vendors via the Mutual Fund Dissemination Service (''MFDS'') so all firms will receive the NAV per share at the same time. The Reporting Authority[23] also will ensure that the Composition File will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio positions and changes in the positions.

For each Fund, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value,'' will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session[24] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service (''GIDS''). The IIV will be based on current information regarding the value of the securities and other assets held by a Fund.[25] The purpose of the IIVs is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*e.g.,* if an investor wants to acquire approximately $5,000 of a Fund, how many Shares should the investor buy?).[26]

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[18] Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV−$0.01/NAV+$0.01'' (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

[19] All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

[20] File Transfer Protocol (''FTP'') is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

[21] *See* footnote 16.

[22] *See* footnote 11.

[23] *See* Nasdaq Rule 5745(c)(4).

[24] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the future event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday trading halts than buyers and sellers of conventional exchange-traded funds ("ETFs") and other exchange-traded securities.

Trading Rules

Nasdaq deems Shares to be equity securities, thus rendering trading in Shares to be subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in Shares from 9:30 a.m. until 4:00 p.m. E.T.

Every order to trade Shares of the Funds is subject to the proxy price protection threshold of plus/minus $1.00, which determines the lower and upper threshold for the life of the order and whereby the order will be cancelled at any point if it exceeds $101.00 or falls below $99.00, the established thresholds.[27] With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.[28]

Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[29] The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG")[30] regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities. In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund's portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

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[25] IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

[26] Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund's Registration Statement, Web site and any advertising or marketing materials will include prominent disclosure of this fact. Although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

[27] *See* Nasdaq Rule 5745(h).

[28] *See* Nasdaq Rule 5745(b)(6).

[29] FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[30] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of a Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular also will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available at *www.nextshares.com.*

Information regarding Fund trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the Funds' portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Funds on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by any Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800, *et. seq.*

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act[31] in general, and Section 6(b)(5) of the Act[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is not registered as a broker-dealer, but it is affiliated with a broker-dealer. The Adviser has implemented a "fire wall" between the Adviser and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Funds' portfolio holdings. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, to the extent necessary.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a representation from each issuer of Shares that the NAV per Share will be calculated on each business day that the New York Stock Exchange is open for trading and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information would be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public Web site through which the current prospectus for each Fund may be downloaded.[33] In addition, a separate Web site (*www.nextshares.com*) will include additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread. The Web site at *www.nextshares.com* will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free Web site.[34] The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated and disseminated on an intraday basis at intervals of not more than 15 minutes during trading on the Exchange and provided to Nasdaq for dissemination via GIDS. A complete list of current portfolio positions for the Funds will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined above. Once each Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services. The Exchange expects that information regarding NAV-based trading prices and volumes of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by transacting using limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV.

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[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* footnote 16.

[34] *See* footnote 11.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the introduction of the Funds would promote competition by making available to investors a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–103 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17671 Filed 7–26–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 19b–5 and Form PILOT, SEC File No. 270–448, OMB Control No. 3235–0507.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 19b–5 (17 CFR 240.19b–5) and Form PILOT (17 CFR 249.821) under the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*).

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Act (15 U.S.C. 78s(b)) to self-regulatory organizations ("SROs") wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of any such pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. Within two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5, is operating a pilot trading system in compliance with the Act, and is carrying out its statutory oversight obligations under the Act.

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[35] 17 CFR 200.30–3(a)(12).

The respondents to the collection of information are national securities exchanges and national securities associations.

While there are 20 national securities exchanges and national securities associations that may avail themselves of the exemption under Rule 19b–5 and the use of Form PILOT, it is estimated that approximately three respondents will file a total of 3 initial reports (for an estimated annual burden of 72 hours total), 12 quarterly reports (for an estimated annual burden of 36 hours total), and 6 amendments (for an estimated annual burden of 18 hours total) on Form PILOT per year, with an estimated total annual response burden of 126 hours and an estimated total annual cost burden of $10,047. At an average hourly cost of $272.33, the aggregate related internal cost of compliance pertaining to Rule 19b–5 for all respondents is $34,314 per year (126 burden hours multiplied by $272.33/hour = $34,314).

Although Rule 19b–5 does not in itself impose recordkeeping burdens on SROs, it relies on existing requirements imposed by Rule 17a–1 under the Act (17 CFR 240.17a–1) to require SROs to retain all the rules and procedures relating to each pilot trading system operating pursuant to Rule 19b–5, and to make such records available for Commission inspection for a period of not less than five years, the first two years in an easily accessible place.

The filing of a Form PILOT is mandatory for any SRO seeking a temporary exemption under Rule 19b–5 from the rule filing requirements of Section 19(b) of the Act in connection with the operation of a pilot trading system. It is also mandatory that an SRO operating a pilot trading system file with the Commission notices of material systems changes and quarterly transaction reports on Form PILOT. Information provided on Form PILOT is deemed confidential and shall be available only for examination by the Commission, other agencies of the Federal Government, and state securities authorities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

July 22, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–17821 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78391; File No. SR–NSX–2016–05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.26 To Implement the Quoting and Trading Provisions of the Regulation NMS Plan To Implement a Tick Size Pilot Program

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2016, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) [4] thereunder, which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.26 to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program (the "Plan").[5] The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)–(e), which also implemented the quoting and trading provisions of the Plan.[6] Therefore, the Exchange has designated this proposal as "non-controversial" and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available at the Exchange's Web site at *www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish rules to require its ETP Holders [8] to comply with the requirements of the Plan,[9] which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two-year pilot to begin on October 3, 2016.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 17 CFR 242.608.

[6] *See* Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46), as amended by Partial Amendments No. 1 and No. 2 to the Quoting & Trading Rules Proposal. *See* Securities Exchange Act Release No. 77703 (April 25, 2016), 81 FR 25725 (April 29, 2016) (SR–NYSE–2015–46).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] Rule 1.5E(1) defines the term "ETP" as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[9] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4–657) ("Plan Approval Order").

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, the NYSE MKT, LLC ("NYSE MKT"), and NYSE Arca, Inc. (collectively "Participants"), filed the Plan with the Commission, pursuant to Section 11A of the Act [10] and Rule 608 of Regulation NMS thereunder.[11] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[12] The Plan [13] was published for comment in the **Federal Register** on November 7, 2014,[14] and approved by the Commission, as modified, on May 6, 2015.[15] On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.[16] On March 6, 2016, the Commission noticed an amendment to the Plan adding NSX as a Participant.[17]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Plan to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

The Plan will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each, selected by a stratified sampling.[18] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[19] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[20] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[21] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS [22] will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[23]

Amendments to Rule 11.26

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[24] Accordingly, the Exchange is proposing to amend Rule 11.26 to require its ETP Holders to comply with the quoting and trading provisions of the Plan. The proposed Rule is also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of Rule 11.26 would establish the following defined terms:

- "Plan" means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act;
- "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- "Trade-at Intermarket Sweep Order" [25] would mean a limit order for a Pilot Security that meets the following requirements:
- When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and
- Simultaneously with the routing of the limit order identified as a Trade-at

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[10] 15 U.S.C. 78k–1.

[11] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[12] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[13] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[14] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (November 7, 2015) (File No. 4–657) (Plan Filing).

[15] *See* Plan Approval Order, note 9, *supra*.

[16] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[17] *See* Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016).

[18] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[19] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[20] *See* Section VI(C) of the Plan.

[21] *See* Section VI(D) of the Plan.

[22] 17 CFR 242.611.

[23] *See* Section VII of the Plan.

[24] The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. NSX has adopted Rule 11.26(b), Compliance with Data Collection Requirements, to implement those requirements. *See* Securities Exchange Act Release No. 77483 (March 31, 2016), 81 FR 20040 (April 6, 2016) (SR–NSX–2016–01).

[25] The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO and, simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs. *See* Plan, Section I(MM).

The Plan allows (i) an order that is identified as an ISO to be executed at the price of a Protected Quotation (*see* Plan, Section VI(D)(8) and proposed Rule 11.26(c)(3)(D)(iii)j.; and (ii) an order to execute at the price of a Protected Quotation that "is executed by a trading center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation that was traded at." *See* Plan, Section VI(D)(9) and proposed Rule 11.26(c)(3)(D)(iii)i. Accordingly, the Exchange proposes to clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 11.26(a)(1), a comprehensive definition of "Trade-at ISO." As set forth in the Plan and as noted above, the definition of a Trade-at ISO used in the Plan does not distinguish ISOs that are compliant with Rule 611 or Regulation NMS from ISOs that are compliant with Trade-at. The Exchange therefore proposes the separate definition of Trade-at ISO contained in proposed Rule 11.26(a). The Exchange believes that this proposed definition will further clarify to recipients of ISOs in Test Group Three securities whether the ISO satisfies the requirements of Rule 611 of Regulation NMS or Trade-at.

Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

Paragraph (a)(1)(E) of Rule 11.26 would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require ETP Holders to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its ETP Holders with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

In addition, Paragraph (a)(4) would provide that the NSX's trading system (the "System")[26] would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.[27]

The Exchange also proposes to add Rule 11.26(a)(5) to provide for the treatment of Pilot Securities that drop below a $1.00 value during the Pilot Period.[28] The Exchange proposes that if the price of a Pilot Security drops below $1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate ETP Holders to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below $1.00.

However, if the Closing Price of a Pilot Security on any given business day is below $1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 11.26(b).

The Exchange proposes Rules 11.26(c)(1) through (3), which would require ETP Holders to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed 11.26(c)(1) would provide that no ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer ("NBBO") or Best Protected Bid and Best Protect Offer ("PBBO") and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.[29] Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by permitted by applicable Participant, SEC and Exchange Rules.

With regard to Pilot Securities in Test Group Two, proposed Rule 11.26(c)(2) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 11.26(c)(2)(B) would provide that, absent one of the listed exceptions in proposed Rule 11.26(c)(2)(C) enumerated below, no ETP Holder may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment would apply to all trades, including Brokered Cross Trades.[30]

Paragraph (c)(2)(C) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, ETP Holders trading Pilot Securities in Test Group Two would be allowed to trade in increments less than $0.05 under the following circumstances:[31]

(i) Trading may occur at the midpoint between the NBBO or PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO;

(ii) Negotiated Trades may trade in increments less than $0.05; and

(iii) Execution of a customer order to comply with Rule 12.6 following the execution of a proprietary trade by the member organization at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.[32]

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[26] Rule 1.5S(4) defines the term "System" as ". . . the electronic securities communications and trading facility designated by the Board through which the orders of Users are consolidated for ranking and execution.

[27] The Exchange is evaluating its internal policies and procedures to ensure its compliance with the Plan. Violations of the Plan by ETP Holders will be addressed through the Exchange's current ruleset and its disciplinary process. *See* Chapter VIII of the Exchange's rule book and Rule 3.2, Violations Prohibited.

[28] New York Stock Exchange LLC, on behalf of the Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. See letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 (the "October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 (the "February Exemption Request," and together with the October Exemption Request, the "Exemption Request Letters"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted New York Stock Exchange LLC a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the Exemption Request Letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Sherry Sandler, Associate General Counsel, New York Stock Exchange LLC, dated April 25, 2016 (the "Exemption Letter"). The Exchange is seeking the same exemptions as requested in the Exemption Request Letters, including without limitation, an exemption relating to proposed Rule 11.26(a)(5).

[29] Section VI.(B) of the the Plan provides that orders for Test Group One securities entered into a Participant-operated retail liquidity program may also be ranked and accepted in increments of less than $0.05. NSX does not currently operate a retail liquidity program.

[30] Section I.(G) of the Plan defines a "Brokered Cross Trade" as a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. The Exchange notes that it does not currently offer the functionality to execute Brokered Cross Trades on NSX's trading system.

[31] Section VI.(C)(2) of the Plan provides that Retail Investor Orders, as defined in Section I (DD) of the Plan, may trade in increments less than $0.05 where such an order is provided with price improvement that is at least $0.005 better than the best protected bid or best protected offer. Section I. (EE) defines a "retail liquidity providing order" as an order entered into a Participant-operated retail liquidity program to execute against Retail Investor Orders. As noted in note 29, *supra,* NSX does not currently operate a retail liquidity program and therefore Section VI.(C)(2) of the Plan does not apply with respect to the quoting and trading of Test Group Two Pilot Securities on NSX.

[32] NSX Rule 12.6, Customer Priority, generally prohibits an ETP Holder from buying or selling, or initiating the purchase or sale of any security traded on the Exchange for its own account or for any

Paragraph (c)(3)(A)–(c)(3)(C) would set forth the requirements for Pilot Securities in Test Group Three. ETP Holders quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (c)(3)(D) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the "Trade-at Prohibition."[33] Paragraph (c)(3)(D)(ii) would provide that, absent one of the listed exceptions in proposed Rule 11.26(c)(3)(D)(iii) enumerated below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 11.26(c)(3)(D)(iii) would allow ETP Holders to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:[34]

a. The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,[35] of a Trading Center within a member organization that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,[36] but only up to the full displayed size of that independent trading unit's previously displayed quote;[37]

b. The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an ETP Holder's organization that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal[38]) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent unit's previously displayed quote;[39]

c. The order is of Block Size[40] at the time of origin and may not be:

A. an aggregation of non-block orders; or

B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution.[41]

d. The order is a Retail Investor Order executed with at least $0.005 price improvement;

e. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

f. The order is executed as part of a transaction that was not a "regular way" contract;

g. The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

h. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

i. The order is identified as a Trade-at Intermarket Sweep Order;[42]

j. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders as defined in Rule 600(b)(3) of Regulation NMS under the Act[43] to execute against the full

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account in which the ETP Holder or any associated person of the ETP Holder is directly or indirectly interested while it holds, or has knowledge of, an unexecuted market order for a customer in that security. With respect to limit orders, such an execution of an order for the account of the ETP Holder or an associated person is prohibited if it is at the same price or a better price than the customer order, Rule 12.6(d) contains an exception to these requirements for purposes of facilitating the execution of a customer order on a riskless principal basis.

[33] Proposed Rule 11.26(c)(3)(D)(i) would define the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

[34] Section VI.(D)(3) of the Plan provides that an order in a Test Group 3 stock may execute at the trade-at price if the order is a Retail Investor Order and is executed with at least $0.005 price improvement. NSX currently does not offer a Retail Investor Order.

[35] The Exchange is proposing that, for proposed Rules 11.26(c)(3)(D)(iii)a.–b., a Trading Center operated by a broker-dealer would mean an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer. *See* 17 CFR 242.200.

Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

[36] The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

[37] This proposed exception to Trade-at would allow a Trading Center to execute an order at the Protected Quotation in the same capacity in which it has displayed a quotation at a price equal to the Protected Quotation and up to the displayed size of such displayed quotation.

[38] As described above, proposed Rule 11.26(c)(3)(D)(iii)a. would establish the circumstances in which a Trading Center displaying an order as riskless principal would be permitted to Trade-at the Protected Quotation. Accordingly, proposed Rule 11.26(c)(3)(D)(iii)b. would exclude such circumstances.

[39] The display exceptions to Trade-at set forth in proposed Rules 11.26(c)(3)(D)(iii)a. and b. would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that matches orders in the over-the-counter market shall be deemed to have "executed" such orders as a Trading Center for purposes of proposed Rule 11.26. Accordingly, if a broker-dealer is not displaying a quotation at a price equal to the Protected Quotation, it could not submit matched trades to an alternative trading center ("ATS") that was displaying on an agency basis the quotation of another ATS subscriber. However, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the protected bid, could internalize a customer sell order up to its displayed size. The display exceptions would not permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber and confirmed that a broker-dealer would not be permitted to trade on the basis of interest that it is not responsible for displaying.

[40] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[41] If a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would retain the Trade-at exemption provided under proposed Rule 11.26(c)(3)(D)(iii)c. For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve. The same analysis would hold true at the next price point, if the size of the incoming order would exceed all available shares at the first price, and the remaining shares to be executed would be 5,000 shares or more.

[42] The Exchange has defined a Trade-at ISO in proposed Rule 11.26(a)(1)(D); this exception refers to the ISO that is received by a Trading Center.

[43] 17 CFR 242.600(b)(30). The Exchange notes that it is permitting the use of Trade-at ISOs and ISOs, either alone or combined, to allow for ease of implementation of the Trade-at provisions by using existing routing processes to the extent possible. An ETP Holder sending a TAISO represents that it simultaneously routed orders to execute against all Protected Quotations priced better than or equal to the Trade-At price, while an ETP Holder sending an order marked as ISO only represents that it simultaneously routed orders to execute against all Protected Quotations at prices superior to the Trade-At price. ETP Holders that route orders marked ISO instead of Trade-at ISO for a test Group Three stock must satisfy all at-priced protected quotations and not just those at superior prices.

displayed size of the Protected Quotation that was traded at;[44]

k. The order is executed as part of a Negotiated Trade;

l. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

m. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

A. The stopped order was for the account of a customer;

B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment;[45]

n. The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

o. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account.[46] A bona fide error is defined as:

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 11.26(c)(3)(D)(iv) would prevent member organizations from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[47] in general, and furthers the objectives of Section 6(b)(5) of the Act,[48] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its member organizations would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.[49] Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

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[44] In connection with the definition of a Trade-at ISO proposed in Rule 11.26(a)(1)(D), this exception refers to the Trading Center that routed the ISO.

[45] The stopped order exemption in Rule 611 of Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution." *See* 17 CFR 242.611(b)(9). The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution" *See* Plan, Section VI(D)(12).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is $10.00 and another protected quote is at $9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed 11.26(c)(3)(D)(iii)m. to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See* the Exemption Letter, note 28, *supra*. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

[46] The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange's proposed Rule 11.26(c)(3)(D)(iii) are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center *See* 17 CFR 242.611(b)(2) and (b)(3). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate this additional exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context.

Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at Prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See* the Exemption Letter, note 28, *supra*. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would be required to establish, maintain, and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center would have to regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures. *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78k–1.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its member organizations with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A)[50] of the Exchange Act and Rule 19b–4(f)(6) thereunder.[51] Because the proposed rule is designed to conform the Exchange's rules to a Commission rule, the proposal qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2016–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2016–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2016–05, and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17677 Filed 7–26–16; 8:45 am]

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[50] 15 U.S.C. 78(s)(b)(3)(A).

[51] 17 CFR 240.19b–4(f)(6).

[52] 17 CFR 240.19b–4(f)(6). *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) ("Commission Guidance and Amendment to the Rule Relating to Organization and Program Management Concerning Proposed Rule Changes by Self-Regulatory Organizations") (the "Streamlining Release"). As set forth in the Streamlining Release, Rule 19b-4(f)(6) permits a proposed rule change to become immediately effective to the extent such proposal is a proposed rule change to implement provisions of an approved national market system plan or a Commission rule. *Id.* at 40148.

[53] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS427]

WTO Dispute Settlement Proceeding Regarding China—Anti-Dumping and Countervailing Duty Measures on Broiler Products From the United States—Recourse by the United States to Article 21.5 of the DSU

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on May 27, 2016, the United States requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* with the People's Republic of China ("China") concerning China's continuing imposition of anti-dumping and countervailing duties on chicken broiler products from the United States. That request may be found at *www.wto.org* in a document designated as WT/DS427/11. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 15, 2016, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2016–0008.

If you are unable to provide submissions at *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Mayur R. Patel, Associate General Counsel, or Nathaniel J. Halvorson, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a World Trade Organization ("WTO") dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has requested a panel pursuant to Article 21.5 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU").

Major Issues Raised by the United States

On September 25, 2013, the WTO Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *China—Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States* (DS427) ("China—Broiler Products"). The DSB found that China imposed antidumping and countervailing duties on U.S. exports of chicken broiler products in a manner that breached China's obligations under the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). The DSB recommended that China bring its measures into conformity with its obligations under these Agreements.

On October 22, 2013, China announced its intention to implement the DSB recommendations and rulings in this dispute and stated that it would need a reasonable period of time ("RPT") in which to do so. On December 19, 2013, China and the United States informed the DSB that they had reached agreement that the RPT for China to implement the DSB recommendations and rulings shall be 9 months and 14 days from the adoption of the Panel Report, expiring on July 9, 2014. China's Ministry of Commerce ("MOFCOM") subsequently issued a redetermination that continues the imposition of antidumping and countervailing duties on imports of chicken broiler products from the United States. The redetermination, which is set forth in MOFCOM's Announcement No. 44 [2014], including its annexes, states that it came into force as of July 9, 2014.

The United States considers that China has failed to bring its measures into conformity with the covered agreements. As there is "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB, the United States is seeking recourse to Article 21.5 of the DSU. Specifically, the United States considers that China's measures continuing to impose antidumping and countervailing duties on chicken broiler products from the United States, as set forth by MOFCOM in Announcement No. 44 [2014], Announcement No. 56 [2013], Announcement No. 52 [2010], Announcement No. 51 [2010], Announcement No. 26 [2010], Announcement No. 8 [2010], and the annexes to the foregoing documents are inconsistent with Articles 1, 2.2, 2.2.1.1, 3.1, 3.2, 3.4, 3.5, 6.1, 6.4, 6.5, 6.8, 6.9, 9.4, 12.2, 12.2.2, and Annex II of the AD Agreement; Articles 10, 12.1, 12.3, 12.4, 12.8, 15.1, 15.2, 15.4, 15.5, 22.3, and 22.5 of the SCM Agreement; and Article VI of the GATT 1994.

Pursuant to an understanding on procedures under Articles 21 and 22 of the DSU, the United States requested consultations with China on May 17, 2016. That request may be found at *www.wto.org* contained in a document designated as WT/DS427/10. The United States and China held consultations on May 24, 2016, but the consultations did not resolve the matter.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2016–0008. If you are unable to provide submissions at *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2016–0008 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Comment Now!" (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use Regulations.gov Site" on the bottom of the page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a "Type Comments" field, or by attaching a document using an "Upload File" field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comments" field. A person requesting that information contained in a comment that he/she submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE"at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2016–0008.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute, which may be viewed on the *www.regulations.gov* Web site. The following documents will be made available to the public at *www.ustr.gov:* the U.S. submissions and any non-confidential summaries or submissions received from other participants in the dispute. The report of the panel in this proceeding, and, if applicable, the report of the Appellate Body, will be available on the Web site of the WTO, at *www.wto.org.*

Annelies Winborne,

Deputy Assistant United States Trade Representative for Monitoring and Enforcement, Office of the United States Trade Representative.

[FR Doc. 2016–17757 Filed 7–26–16; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

EUROCAE WG–99 PLENARY #8/RTCA SC–234 Plenary #5—Calling Notice "Portable Electronic Devices (PEDs)"

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: EUROCAE WG–99 PLENARY #8/RTCA SC–234 Plenary #5—Calling Notice "Portable Electronic Devices (PEDs)".

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of EUROCAE WG–99 PLENARY #8/RTCA SC–234 Plenary #5—Calling Notice "Portable Electronic Devices (PEDs)".

DATES: The meeting will be held August 23–25, 2016, 9:00 a.m. to 5:00 p.m. Tuesday–Wednesday, 9:00 a.m. to 12:00 p.m. Thursday.

ADDRESSES: The meeting will be held at: RTCA, Inc., 1150 18th Street NW., Suite 450, Washington, DC 20036. Individuals wishing for WebEx/Audio information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or (202) 330–0680, Anna von Groote at *anna.vongroote@eurocae.net* or +33 1 40 92 79 26 or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the EUROCAE WG–99 PLENARY #8/RTCA SC–234 Plenary #5—Calling Notice "Portable Electronic Devices (PEDs)". The agenda will include the following:

Tuesday, August 23, 2016—9:00 a.m.–5:00 p.m.

Opening Plenary:

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review
4. Approval of the Minutes from April 2016 Meeting
5. Real Case Document Validation Report
6. Status of FRAC/Open Consultation of DO–XYZ/ED–130A
   a. Comments status and resolution summary
   b. Main outstanding issues requiring committee assessment for resolution
7. Status of FRAC/Open Consultation for DO–307A/ED–239
   a. Comments status and resolution summary
   b. Main outstanding issues requiring committee assessment for resolution
8. Interim Adjournment

Wednesday, August 24, 2016—9:00 a.m.–5:00 p.m.

Task Group Sessions

Thursday, August 25, 2016—9:00 a.m.–12:00 p.m.

Closing Plenary

1. Task Group Reports
   a. Comments status and resolution summary
   b. Confirm action plant to close last outstanding comments
2. Approval of DO–XYZ/ED–130A documents for submission to RTCA PMC and EUROCAE Council for publication
3. Approval of DO–307A/DO–239 documents for submission to RTCA PMC and EUROCAE Council for publication
4. Any other Business
5. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 20, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–17759 Filed 7–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–87]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8718 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Nancy Lauck Claussen, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email: *nancy.l.claussen@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 20, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–8718

Section(s) of 14 CFR Affected: 14 CFR Section 121.311

Description of Relief Sought: The petitioner requests an exemption from FAR 121.311 (a) and (b) to the extent required for conjoined twins to be able to be held in their caregiver's lap during all phases of flight while aboard an aircraft, even though they have reached their second birthday. This exemption would generally provide an equivalent level of safety to that of a single lap held infant who has not reached their second birthday, because the combined weight of these twins does not exceed the 99th percentile for weight for an infant of only 23 months. Due to physical challenges, without an exemption, these conjoined twins would be unable to fly onboard an aircraft.

[FR Doc. 2016–17652 Filed 7–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Guidance on Sound Incentive Compensation Practices

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of an information collection titled, "Guidance on Sound Incentive Compensation Practices."

DATES: Written comments should be submitted by September 26, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0245, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Guidance on Sound Incentive Compensation Policies.

OMB Number: 1557–0245.

Abstract: Under the guidance, each national bank and Federal savings association is required to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in developing and administering incentive compensation arrangements, identify the source of significant risk-related factors, establish appropriate controls governing these factors to help ensure their reliability, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for developing and administering incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 41 large banks; 1,381 small banks.

Estimated Burden per Respondent: 520 hours for large banks; 52 hours for small banks.

Frequency of Response: Annually.

Total Annual Burden: 93,132 hours.

All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 21, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–17754 Filed 7–26–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5500–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500–EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

DATES: Written comments should be received on or before September 26, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

OMB Number: 1545–0956.

Form Number: 5500–EZ.

Abstract: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the Internal Revenue Code or whether the plan should be audited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 27 hours, 5 minutes.

Estimated Total Annual Burden Hours: 7,005,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–17763 Filed 7–26–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Compensation Deferred Under Eligible Deferred Compensation Plans.

DATES: Written comments should be received on or before September 26, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Compensation Deferred Under Eligible Deferred Compensation Plans.

OMB Number: 1545–1580.

Regulation Project Number: TD 9075.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. TD 9075 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time per Respondent: 1 hour 2 minutes.

Estimate Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 21, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–17760 Filed 7–26–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meetings will be held August 16, 2016, August 17, 2016, August 18, 2016 and August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, August 16, 2016, from 10:30 a.m. to 12:30 p.m. and 2:30 p.m. to 4:30 p.m. Eastern Standard Time via teleconference; Wednesday, August 17, 2016, from 10:30 a.m. to 12:30 p.m. and 2:30.m. to 4:30 p.m. Eastern Standard Time via teleconference; and Thursday, August 18, 2016, from 10:30 a.m. to 12:30 p.m. and 2:30.m. to 4:30 p.m. Eastern Standard Time via teleconference and Friday, August 19, 2016, from 10:30 a.m. to 12:30 p.m. Eastern Standard Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: July 18, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–17764 Filed 7–26–16; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 144 July 27, 2016

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249b
Disclosure of Payments by Resource Extraction Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249b

[Release No. 34–78167; File No. S7–25–15]

RIN 3235–AL53

Disclosure of Payments by Resource Extraction Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting Rule 13q–1 and an amendment to Form SD to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the disclosure of payments by resource extraction issuers. Rule 13q–1 was initially adopted by the Commission on August 22, 2012, but it was subsequently vacated by the U.S. District Court for the District of Columbia. Section 1504 of the Dodd-Frank Act added Section 13(q) to the Securities Exchange Act of 1934, which directs the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of such payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide information about those payments in an interactive data format.

DATES: *Effective date:* The final rule and form amendment are effective September 26, 2016.

Compliance date: A resource extraction issuer must comply with the final rule and form for fiscal years ending on or after September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Shehzad K. Niazi, Special Counsel; Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430; or Elliot Staffin, Special Counsel; Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting Rule 13q–1[1] and an amendment to Form SD[2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3]

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I. Introduction and Background

On December 11, 2015, we re-proposed a rule and form amendments–[4] to implement Section 13(q) of the Exchange Act (the ''Proposing Release''). Rules implementing Section 13(q) were previously adopted by the Commission on August 22, 2012 (the ''2012 Rules''),[5] but were vacated by the U.S. District Court for the District of Columbia by order dated July 2, 2013.[6]

A. Section 13(q) of the Exchange Act

Section 13(q) was added in 2010 by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Act'').[7] It directs the Commission to ''issue final rules that require each resource extraction issuer to include in an annual report . . . information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals, and (ii) the type and total amount of such payments made to each government."[8]

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[1] 17 CFR 240.13q–1.

[2] 17 CFR 249.448.

[3] 15 U.S.C. 78a *et seq.*

[4] Exchange Act Release No. 34–76620 (Dec. 11, 2015), 80 FR 80057 (Dec. 23, 2015) *available at http://www.sec.gov/rules/proposed/2015/34-76620.pdf.*

[5] *See* Exchange Act Release No. 67717 (Aug. 22, 2012), 77 FR 56365 (Sept. 12, 2012) *available at http://www.sec.gov/rules/final/2012/34-67717.pdf* (the ''2012 Adopting Release''). *See also* Exchange Act Release No. 63549 (Dec. 15, 2010), 75 FR 80978 (Dec. 23, 2010) *available at http://www.sec.gov/rules/proposed/2010/34-63549.pdf* (the ''2010 Proposing Release'').

[6] *API* v. *SEC,* 953 F. Supp. 2d 5 (D.D.C., 2013) (''API Lawsuit'').

[7] Public Law 111–203 (July 21, 2010).

Based on the statutory text and the legislative history, we understand that Congress enacted Section 1504 to increase the transparency of payments made by oil, natural gas, and mining companies to governments for the purpose of the commercial development of their oil, natural gas, and minerals. As discussed in more detail below, the legislation reflects U.S. foreign policy interests in supporting global efforts to improve transparency in the extractive industries.[9] The goal of such transparency is to help combat global corruption and empower citizens of resource-rich countries to hold their governments accountable for the wealth generated by those resources.[10] Section 13(q) also defines several key terms, such as "resource extraction issuer,"[11] "commercial development of oil, natural gas, or minerals,"[12] "foreign government,"[13] and "payment,"[14] each of which is addressed in detail below.

Section 13(q) provides that "[t]o the extent practicable, the rules . . . shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals."[15] In light of this directive, we have considered significant international initiatives in connection with the final rules, such as the Extractive Industries Transparency Initiative ("EITI") and the regulations enacted by the European Union and Canada.[16]

Pursuant to Section 13(q), the rules we adopt must require a resource extraction issuer to submit the payment information included in an annual report in an electronic data format in which the information is identified using a standardized list of electronic tags.[17] Section 13(q) lists certain electronic tags that must be included in the rules to identify specified information[18] while also authorizing the Commission to require additional electronic tags for other information that it determines is necessary or appropriate in the public interest or for the protection of investors.[19]

Section 13(q) further requires, to the extent practicable, that the Commission make publicly available online a compilation of the information required to be submitted by resource extraction issuers under the new rules.[20] The statute does not define the term compilation or describe how it should be generated.

Finally, Section 13(q) provides that the final rules "shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year . . . that ends not earlier than one year after the date on which the Commission issues final rules . . . ."[21]

B. The 2012 Rules and Litigation

We adopted final rules implementing Section 13(q) on August 22, 2012.[22] Subsequently, in October 2012, the American Petroleum Institute ("API"), the U.S. Chamber of Commerce, and two other industry groups challenged the 2012 Rules.[23] On July 2, 2013, the U.S. District Court for the District of Columbia vacated the rules.[24] The court based its decision on two findings: first, that the Commission misread Section 13(q) to compel the public disclosure of the issuers' reports; and second, the Commission's explanation for not granting an exemption for when disclosure is prohibited by foreign governments was arbitrary and capricious. On September 18, 2014, Oxfam America, Inc. filed suit in the U.S. District Court for the District of Massachusetts to compel the Commission to promulgate a final rule implementing Section 1504. On September 2, 2015, the court issued an order holding that the Commission unlawfully withheld agency action by not promulgating a final rule.[25] The Commission filed an expedited schedule for promulgating the final rule with the court on October 2, 2015. Consistent with that schedule, the Commission re-proposed rules and form amendments on December 11, 2015. The comment period for the re-proposal was divided into an initial comment period and a reply comment period. These comment periods were subsequently extended in response to a request by the API.[26] The Commission received 369

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[8] 15 U.S.C. 78m(q)(2)(A). As discussed below, Section 13(q) also specifies that the Commission's rules must require certain information to be provided in interactive data format.

[9] *See* Section I.C below.

[10] *See, e.g.,* 156 Cong. Rec. S3816 (daily ed. May 17, 2010) (Statement of Senator Lugar, one of the sponsors of Section 1504) ("Adoption of the Cardin-Lugar amendment would bring a major step in favor of increased transparency at home and abroad. . . . More importantly, it would help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues. . . . The essential issue at stake is a citizen's right to hold its government to account. Americans would not tolerate the Congress denying them access to revenues our Treasury collects. We cannot force foreign governments to treat their citizens as we would hope, but this amendment would make it much more difficult to hide the truth."); *id.* at S3817–18 (May 17, 2010) (Statement of Senator Dodd) ("[C]ountries with huge revenue flows from energy development also frequently have some of the highest rates of poverty, corruption and violence. Where is all that money going? [Section 13(q)] is a first step toward addressing that issue by setting a new international standard for disclosure.").

[11] 15 U.S.C. 78m(q)(1)(D).

[12] 15 U.S.C. 78m(q)(1)(A).

[13] 15 U.S.C. 78m(q)(1)(B).

[14] 15 U.S.C. 78m(q)(1)(C).

[15] 15 U.S.C. 78m(q)(2)(E).

[16] *See* Section I.C below for a discussion of these disclosure regimes, including why they are significant. *See also* Proposing Release, nn.13–18 and accompanying text.

[17] 15 U.S.C. 78m(q)(1)(E), (1)(F), (2)(C), (2)(D).

[18] These tags include: (I) the total amounts of the payments, by category; (II) the currency used to make the payments; (III) the financial period in which the payments were made; (IV) the business segment of the resource extraction issuer that made the payments; (V) the government that received the payments and the country in which the government is located; (VI) and the project of the resource extraction issuer to which the payments relate. 15 U.S.C. 78m(q)(2)(D)(ii).

[19] 15 U.S.C. 78m(q)(2)(D)(ii)(VII).

[20] 15 U.S.C. 78m(q)(3).

[21] 15 U.S.C. 78m(q)(2)(F).

[22] We received over 150 unique comment letters on the 2010 Proposing Release, as well as over 149,000 form letters (including a petition with 143,000 signatures). The letters, including the form letters designated as Type A, Type B, and Type C, are available at *http://www.sec.gov/comments/s7-42-10/s74210.shtml*. In addition, to facilitate public input on the Act before the comment periods for specific rulemakings opened, the Commission provided a series of email links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml*. The public comments we received on Section 1504 of the Act, which were submitted prior to the 2010 Proposing Release, are available on our Web site at *http://www.sec.gov/comments/df-title-xv/specialized-disclosures/specialized-disclosures.shtml*. Many comments were also received between the issuance of the 2012 Adopting Release and the recent Proposing Release and are available at *https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resource-extraction-issuers.shtml*.

[23] *See API et al.* v. *SEC, No. 12–1668 (D.D.C. Oct. 10, 2012). Petitioners also filed suit in the U.S. Court of Appeals for the DC Circuit, which subsequently dismissed the suit for lack of jurisdiction. See* API v. *SEC*, 714 F. 3d 1329 (D.C. Cir. 2013).

[24] *API* v. *SEC*, 953 F. Supp. 2d 5 (D.D.C., 2013) ("API Lawsuit").

[25] *Oxfam America, Inc.* v. *United States Securities and Exchange Commission*, 126 F. Supp. 3d 168 (D. Mass. 2015).

[26] In response to API's request, the Commission extended the initial comment period from January 25, 2016 to February 16, 2016 and the reply comment period from February 16, 2016 to March 8, 2016. *See* letter from API (Jan. 7, 2016) and Exchange Act Release No. 34–76958 (Jan. 21, 2016),

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letters (including one form letter submitted 308 times and a petition with 116,923 signatures) responding to the requests for comment in the Proposing Release.[27]

C. International Transparency Efforts

As discussed at length in the Proposing Release, Section 13(q) reflects the U.S. foreign policy interest in supporting global efforts to improve the transparency of payments made in the extractive industries in order to help combat global corruption and promote accountability.[28] We formulated the proposed rules with the purpose of furthering these interests, and federal agencies with specific expertise in this area submitted comments affirming that the proposed rules would accomplish that purpose.[29] Notably, the U.S. Department of State expressed the view that, if adopted, the proposed rule would be a "strong tool to increase transparency and combat corruption" and stated that it would advance "the United States' strong foreign policy interests in promoting transparency and combatting corruption globally."[30] In addition, the U.S. Agency for International Development ("USAID") stated that the proposed rule, if adopted, would be "a significant step toward greater energy and mineral industry transparency and, correspondingly, strengthened governance and civil society anti-corruption efforts."[31] According to USAID, "enforcement of the proposed rule would contribute towards U.S. Government foreign policy goals of supporting stable and democratic governments, and in particular towards USAID's goal of providing assistance to resource-rich countries in support of economic growth, good governance, transparency, and building civil society."[32]

Other commenters, including individuals and non-governmental organizations, supported the view that Section 13(q) was enacted to further the U.S. Government's interest in improving transparency in an effort to help combat global corruption and promote accountability.[33] For example, one commenter stated that "the governmental interest of reducing corruption and potentially enhancing governmental accountability . . . underpins [Section 13(q)]."[34] Another commenter stated that "[p]romoting revenue transparency in the extractives sector with a robust implementation of Section 1504 would provide civil society the necessary tools to prevent and combat corruption worldwide" and that since "natural resource extraction accounts for at least 10% of GDP in 61 countries, the potential benefits of strong rules under Section 1504 are significant in terms of healthier and better educated populations, creating more productive societies and higher economic growth rates."[35] Comments we received on the Proposing Release from former and current members of the U.S. Congress supported our interpretation of the transparency and anti-corruption goals of Section 13(q).[36] These current and former U.S. senators stated that "transparency is a critical tool to ensure that citizens in resource rich countries can monitor the economic performance of oil, gas and mining projects and ensure that revenues, especially if more meager than hoped, are used responsibly."[37] Significantly, this view was not limited to government, civil society, and individual commenters. Industry commenters also attested to a link between Section 13(q)'s promotion of increased transparency and reducing corruption.[38]

To determine how best to achieve the policy objectives of Section 13(q) and to meet the statutory directive to "support the commitment of the Federal Government to international transparency promotion efforts" to the extent practicable, we also have considered the current state of international transparency efforts. The following discussion addresses the global transparency initiatives that have developed since the 2012 Adopting Release was issued, including in the European Union, Canada, and through the EITI.[39] As discussed below, these initiatives govern a significant percentage of the companies that will be impacted by the final rules.[40]

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81 FR 4598 (Jan. 27, 2016), *available at http://www.sec.gov/rules/proposed/2016/34-76958.pdf*.

[27] These letters, including the form letters designated as Type A and B, are available at *http://www.sec.gov/comments/s7-25-15/s72515.shtml*.

[28] *See* Section I.E of the Proposing Release, which we hereby expressly incorporate by reference. *See also* 156 Cong. Rec. S3976 (May 19, 2010) (Sen. Feingold) (explaining that Section 13(q) is intended to "empower[] citizens in resource-rich countries in their efforts to combat corruption and hold their governments accountable"). The importance placed by the United States and other members of the international community on reducing global corruption was recently illustrated through the international anti-corruption summit that British Prime Minister David Cameron hosted in London on May 12, 2016. The summit brought together world leaders, business, and civil society to agree to a package of steps to, among other things, promote transparency measures that expose corruption. The summit adopted a Global Declaration Against Corruption that specifically endorsed the promotion of transparency and governance in the resource extraction sector. *See Global Declaration Against Corruption* (May 12, 2016), *available at https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption* (last visited June 16, 2016). President Obama and the other leaders of the G7 nations in Japan during their annual conference similarly emphasized the importance of combatting global corruption. See G7 Ise-Shima Leaders' Declaration (May 26, 2016), *available at http://www.mofa.go.jp/files/000160266.pdf* (last visited June 16, 2016) ("[r]ecognizing the magnitude of the global problem of corruption" and "reiterat[ing] that our collective and individual action to fight corruption is critical for economic growth, sustainable development and maintaining peace and security").

[29] We note that the legislative history also indicates that Congress intended for the Section 13(q) disclosures to serve as an informational tool for investors. *See, e.g.,* 156 Cong. Rec. S3815 (May 17, 2010) (Sen. Cardin) ("Investors need to know the full extent of a company's exposure"); *id.* at S3816 (May 17, 2010) (Sen. Lugar) ("[the disclosures] would empower investors to have a more complete view of the value of their holdings").

[30] Letter from the United States Department of State (Jan. 21, 2016) ("State Department").

[31] Letter from U.S. Agency for International Development (Feb. 16, 2016) ("USAID"). According to its Web site, USAID "carries out U.S. foreign policy by promoting broad-scale human progress at the same time it expands stable, free societies, creates markets and trade partners for the United States, and fosters good will abroad." USAID, *Who We Are, available at https://www.usaid.gov/who-we-are* (last visited June 16, 2016). USAID is particularly committed to transparency, such as the President's Open Government Initiative. *See* USAID, *Our Commitment to Transparency, available at https://www.usaid.gov/results-and-data/progress-data/transparency* (last visited June 16, 2016).

[32] *Id.*

[33] *See, e.g.,* letters from American Security Project (Jan. 21, 2016) ("ASP"); Elise J. Bean (Feb. 16, 2016) ("Bean"); BHP Billiton (Jan. 25, 2016) ("BHP"); Pietro Poretti (Feb. 15, 2016) ("Poretti"); Publish What You Pay—US (Feb. 16, 2016) ("PWYP–US 1"); and Transparency International—USA (Feb. 16, 2016) ("TI–USA").

[34] *See* letter from Poretti.

[35] *See* letter from TI–USA.

[36] *See* letter from Senators Cardin, Baldwin, Brown, Coons, Durbin, Leahy, Markey, Menendez, Markley, Shaheen, Warren, and Whitehouse (Feb. 5, 2016) ("Sen. Cardin et al.") and letter from retired Senators Lugar, Dodd, and Levin (Feb. 4, 2016) ("Sen. Lugar et al.").

[37] *Id.*

[38] *See* letters from BHP ("Transparency by governments and companies alike regarding revenue flows from the extraction of natural resources in a manner which is meaningful, practical and easily understood by stakeholders reduces the opportunity for corruption") and Total S.A. (Jan. 13, 2016) ("Total") ("Total considers that the re-introduction of Rule 13q–1 under the Dodd Frank Act should both restore a level playing field among major publicly-listed oil and gas companies and improve transparency to help combat global corruption and increase accountability.").

[39] We look to the EITI because it is a significant international transparency framework, it was mentioned in the legislative history of Section 13(q), and the definition of "payment" in Section 13(q)(1)(C)(ii) [15 U.S.C. 78m(q)(1)(C)(ii)] specifically refers to the EITI. *See, e.g.,* 156 Cong. Rec. S3816 (daily ed. May 17, 2010) (Statement of Senator Lugar) ("This domestic action will complement multilateral transparency efforts such as the Extractive Industries Transparency Initiative—the EITI—under which some countries are beginning to require all extractive companies operating in their territories to publicly report their payments.").

[40] *See* Section III.B.2.b below for our estimates regarding the number of resource extraction issuers

1. European Economic Area

The European Parliament and Council of the European Union adopted two directives that include payment disclosure rules.[41] The EU Accounting Directive and the EU Transparency Directive (the "EU Directives") are very similar to each other in content. They determine the applicability and scope of the disclosure requirements and set the baseline in each EU member state and European Economic Area ("EEA")[42] country for annual disclosure requirements for oil, gas, mining, and logging companies concerning the payments they make to governments on a per country and per project basis.[43] The EU Accounting Directive regulates the provision of financial information by all "large" companies[44] incorporated under the laws of an EU member state or those of an EEA country, even if the company is privately held. It requires covered oil, gas, mining, and logging companies to disclose specified payments to governments. The EU Transparency Directive applies these disclosure requirements to all companies listed on EU-regulated markets[45] even if they are not registered in the EEA or are incorporated in other countries.[46] The EU Directives also apply to payments made by entities that are part of a company's consolidated report.[47]

The EU Directives generally cover the following activities: "exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials." [48] The types of payments that must be disclosed when made in connection with those activities include: (a) Production entitlements; (b) taxes levied on the income, production, or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes, or sales taxes; (c) royalties; (d) dividends; (e) signature, discovery, and production bonuses; (f) license fees, rental fees, entry fees, and other considerations for licenses and/or concessions; and (g) payments for infrastructure improvements.[49] These payments are covered whether made "in money or in kind." [50]

Disclosure of payments is made on a per project and per government basis. "Project" is defined as "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government." [51] The definition goes on to state that "if multiple such agreements are substantially interconnected, this shall be considered a project." [52] "Substantially interconnected" under the EU Directives means "a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities." [53]

The EU Directives require public disclosure of the payment information, including the issuer's identity.[54] Further, the EU Directives do not provide any exemptions unique to the resource extraction payment disclosure requirements. They do, however, allow issuers to use reports prepared for foreign regulatory purposes to satisfy their disclosure obligations under EU law if those reports are deemed equivalent pursuant to specified criteria.[55] These criteria include: (i) Target undertakings; (ii) target recipients of payments; (iii) payments captured; (iv) attribution of payments captured; (v) breakdown of payments captured; (vi) triggers for reporting on a consolidated basis; (vii) reporting medium; (viii) frequency of reporting; and (ix) anti-evasion measures. No equivalency determinations have been made to-date in the EEA.

Member states are granted some leeway for when the report is due and what penalties will result from violations of the regulations.[56] Required public disclosure of payments in an annual report by companies has begun in the European Union[57] and will occur in all European Union and EEA member countries once the essential provisions have been transposed into domestic law in each country.[58]

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that are already subject to other disclosure regimes. We estimate that approximately 25% of resource extraction issuers are already subject to the EU Directives or ESTMA, but this percentage does not include resource extraction issuers subject to the EITI.

[41] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("EU Accounting Directive"); and Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC on the implementation of certain provisions of Directive 2004/109/EC ("EU Transparency Directive").

[42] *See* European Commission Memo (June 12, 2013) ("Commissioner Barnier welcomes European Parliament vote on the Accounting and Transparency Directives (including country by country reporting)"). The EEA is composed of the EU member states plus Iceland, Liechtenstein, and Norway.

[43] Unlike the proposed rules and the rules we are adopting today, the EU Directives also apply to companies active in the logging of primary forests.

[44] *See* Article 3(4) of the EU Accounting Directive, which defines large companies (*i.e.*, "large undertakings") to mean those which on their balance sheet dates exceed at least two of the three following criteria: (a) Balance sheet totaling €20 million (approximately $22.5 million (USD) as of June 16, 2016); (b) net turnover of €40 million (approximately $44.9 million (USD) as of June 16, 2016); and (c) average number of employees of 250.

[45] The term "regulated market" is defined in the EU's Markets in Financial Instruments Directive 2004/39/EC ("MiFID"), as amended by 2010/78/EU. The list of regulated markets can be found on the European Securities and Markets Authority's Web site at *http://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_rma* (last visited June 16, 2016).

[46] *See* EU Transparency Directive, Art. 2(1)(d) and Art. 6.

[47] *See, e.g.*, EU Accounting Directive, Art. 44.

[48] EU Accounting Directive, Art. 41(1).

[49] *See, e.g.*, EU Accounting Directive, Art. 41(5).

[50] *Id.*

[51] *See, e.g.*, EU Accounting Directive, Art. 41(4).

[52] *Id.* Contrary to the proposed rules and those we are adopting today, the EU Directives appear to require aggregation of "substantially interconnected" agreements rather than providing such aggregation as an option.

[53] *See, e.g.*, EU Accounting Directive, Recital 45.

[54] *See, e.g.*, EU Accounting Directive, Arts. 43, 45.

[55] *See, e.g.*, EU Accounting Directive, Arts. 46, 47.

[56] *See, e.g.*, EU Accounting Directive, Art. 45 ("The report . . . on payments to governments shall be published as laid down by the laws of each Member State . . . ."); *Id.* at Article 51 ("Member States shall provide for penalties applicable to infringements of the national provisions adopted in accordance with this Directive . . . .").

[57] *See, e.g.*, RDS Report discussed in note 302 below.

[58] The requirements of the EU Directives are implemented through the enacting legislation of each EEA member country. The deadlines for implementing the EU Accounting Directive and the EU Transparency Directive were July 20, 2015 and November 26, 2015 respectively. It is our understanding that as of the date of this release, 24 countries have implemented the EU Accounting Directive and 15 countries have implemented the EU Transparency Directive. In general, non-EU EEA countries enact implementing legislation after an EU Directive is adopted into the EEA by Joint Committee decision. The EEA Joint Committee adopted the Accounting Directive on October 30, 2015. As of the date of this release, it is our understanding that the EEA Joint Committee has not yet adopted a decision on the Transparency Directive. As of June 16, 2016, Austria, Belgium, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Slovenia, Spain, Sweden, and the United Kingdom have filed notifications of full transposition (*i.e.*, implementation) of the Accounting Directive with the European Commission. As of June 16, 2016, Austria, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, The Netherlands, Slovakia, Sweden, and the United Kingdom have filed notifications of full transposition of the Transparency Directive with the European Commission. Norway, a non-EU member of the EEA, adopted legislation that complies with both the Accounting and Transparency Directives, effective for fiscal years beginning on or after January 1, 2014. Other EU and EEA member countries are working towards implementation.

Continued

2. Canada

Canada also adopted a federal resource extraction disclosure law, the Extractive Sector Transparency Measures Act ("ESTMA") after the 2012 Adopting Release was issued.[59] Since the Proposing Release, Canada finalized, substantially as proposed, its previously issued ESTMA Guidance[60] and the ESTMA Technical Reporting Specifications ("ESTMA Specifications").[61] ESTMA covers entities that are engaged in the commercial development of oil, gas, or minerals or that control another entity that is engaged in those activities, subject to certain limitations.[62] ESTMA defines "control" as being controlled by another entity "directly or indirectly, in any manner," including those entities in a chain of control.[63] The ESTMA Guidance also addresses issues related to how payments are reported in situations of joint control.[64]

ESTMA defines "commercial development of oil, gas or minerals" as the exploration or extraction of oil, gas, or minerals; the acquisition of a permit, license, lease, or any other authorization to carry out the exploration or extraction of oil, gas, or minerals; or any other prescribed activities in relation to oil, gas, or minerals.[65] The ESTMA Guidance clarifies that exploration or extraction refers to "the key phases of commercial activity which occur during the life cycle of an oil, gas or mineral project" and extend to prospecting, remediation, and reclamation.[66] The ESTMA Guidance also states that these terms are not limited to "active phases of operations on the ground, but also captures temporary periods of inactivity."[67] The definition is not meant to cover ancillary or preparatory activities such as manufacturing equipment or the construction of extraction sites.[68] The definition also generally does not cover post-extraction activities, such as refining, smelting, processing, marketing, distribution, transportation, or export.[69] Nevertheless, certain initial processing activities that are integrated with extraction operations may be considered commercial development of oil, gas, or minerals.[70]

Canada's regulations capture the following payment types: Taxes (other than consumption taxes and personal income taxes); royalties; fees (including rental fees, entry fees and regulatory charges, as well as fees or other consideration for licenses, permits or concessions); production entitlements; bonuses (including signature, discovery and production bonuses); dividends (other than dividends paid to payees as ordinary shareholders); and infrastructure improvement payments.[71] The ESTMA Guidance also includes a provision similar to the anti-evasion provision included in the Proposing Release. It states that entities should look to the substance, rather than the form, of payments in determining which category is applicable, and that in certain circumstances a philanthropic or voluntary contribution made in lieu of one of the payment categories would need to be reported.[72]

Unlike the EU Directives, which do not provide for any exemptions unique to resource extraction payment disclosure, ESTMA authorizes the adoption of regulations respecting, among other matters, "the circumstances in which any provisions of this Act do not apply to entities, payments or payees."[73] As of the date of this release, the Minister of Natural Resources Canada has not authorized any regulations pursuant to that provision that provide for exemptions under ESTMA. ESTMA did, however, defer the requirement for issuers to report payments made to Aboriginal governments in Canada until June 1, 2017.[74]

Canada has adopted project-level reporting, and the definition of "project" used in the ESTMA Specifications is identical to the definition of that term in the EU Directives.[75] Reports prepared under ESTMA must be published on the internet "so they are available to the public" and a link to the report must be provided to the Canadian government.[76]

Like the EU Directives, ESTMA allows for the Minister of Natural Resources Canada to determine that the requirements of another jurisdiction are an acceptable substitute for the domestic requirements.[77] As noted in the Proposing Release, on July 31, 2015 the Minister determined that the reporting requirements set forth in the EU Directives were an acceptable substitute for Canada's requirements under ESTMA.[78] Canada's current substitution policy makes an assessment based on whether a jurisdiction's reporting requirements (1) achieve the purposes of the reporting requirements under ESTMA (as stated, to "deter corruption through public transparency") and (2) address a similar scope of the reporting requirements under ESTMA.[79] Canada requires that an issuer must be subject to the reporting requirements of the other jurisdiction and must have provided the report to the other jurisdiction's competent authority. Although it has adopted a reporting deadline of 150 days after the end of an issuer's financial (*i.e.*, fiscal) year, Canada

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Updates about member country progress towards full transposition can be found at: *http://ec.europa.eu/finance/enforcement/directives/index_en.htm#accounting. See also* letter from Arlene McCarthy OBE (Mar. 8, 2016) ("McCarthy") (stating that "most Member States have transposed the EU Directives").

[59] *See* ESTMA, 2014 S.C., ch. 39, s. 376 (Can.), which came into force on June 1, 2015.

[60] ESTMA Guidance, *available at http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials//ESTMA-Guidance_e.pdf.*

[61] ESTMA Specifications, *available at http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials//ESTMA-Technical_e.pdf.*

[62] ESTMA, Section 2. The reporting obligation applies to (a) an entity that is listed on a stock exchange in Canada; (b) an entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (i) It has at least $20 million (CAD) in assets (approximately $15.4 million (USD) as of June 16, 2016), (ii) it has generated at least $40 million (CAD) in revenue (approximately $30.8 million (USD) as of June 16, 2016), (iii) it employs an average of at least 250 employees; and (c) any other prescribed entity. ESTMA, Section 8.

[63] ESTMA, Section 4(1)–(2). For example, in the statute's words an "entity that controls another entity is deemed to control any entity that is controlled, or deemed to be controlled, by the other entity." ESTMA, Section 4(2).

[64] ESTMA Guidance, Section 3.6 clarifies that if a Reporting Entity makes a payment, it must report it, whether made as an operator of a joint arrangement or as a member of a joint arrangement. Also, if a payment is made by an entity that is not subject to ESTMA but is controlled by a Reporting Entity, the Reporting Entity must report it. Payment attribution rules set out in ESTMA may apply in situations of joint control. The ESTMA Guidance goes on to say that Reporting Entities should consider the facts and circumstances of payments when determining whether to report and which payments to report in situations of joint control.

[65] ESTMA, Section 2. Canada does not appear to have prescribed any additional activities at this time. *See* ESTMA Guidance, Section 1, which only refers to the first two prongs of ESTMA's definition of "commercial development of oil, gas and minerals."

[66] ESTMA Guidance, Section 1.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] ESTMA Guidance, Section 3.1.

[72] ESTMA Guidance, Section 3.5.

[73] *See* ESTMA, Section 23(1).

[74] ESTMA Guidelines, Section 3.3.

[75] *See* ESTMA Specifications, Section 2.3.2.

[76] ESTMA Specifications, Section 2.4.

[77] *See* ESTMA, Section 10(1) ("If, in the Minister's opinion, and taking into account any additional conditions that he or she may impose, the payment reporting requirements of another jurisdiction achieve the purposes of the reporting requirements under this Act, the Minister may determine that the requirements of the other jurisdiction are an acceptable substitute . . . .").

[78] Substitution Process and Determination, *available at http://www.nrcan.gc.ca/mining-materials/estma/18196* (last visited June 16, 2016).

[79] *See id.*

allows for substituted reports to be filed according to the other jurisdiction's deadline if the Department of Natural Resources Canada is notified by email within the 150 day period.[80] If the other jurisdiction's deadline is shorter than 150 days, the issuer may still follow the 150 day deadline when submitting the report in Canada.[81]

3. EITI

The EITI is a voluntary coalition of oil, natural gas, and mining companies, foreign governments, investor groups, and other international organizations. The coalition was formed to foster and improve transparency and accountability in resource-rich countries through the publication and verification of company payments and government revenues from oil, natural gas, and mining.[82] A country volunteers to become an EITI candidate and must complete an EITI validation process to become a compliant member.[83] Currently 51 countries are EITI implementing countries.[84] Furthermore, several countries not currently a part of the EITI have indicated their intention to implement the EITI.[85] We analyze the EITI using the guidance in the EITI Standard and the EITI Handbook on what should be included in a country's EITI plan, as well as reports made by EITI member countries.[86] The U.S. Extractive Industries Transparency Initiative ("USEITI") issued its first report in December 2015.[87] The report covered payments made to the U.S. Federal Government in 2013, including $12.6 billion for extraction on federal lands and $11.8 billion in corporate income tax receipts from mining and petroleum and coal products manufacturing industries.[88]

At a minimum, the EITI requires the disclosure of material payment and revenue information related to the upstream activities of exploration and production, but permits each country's multi-stakeholder group to broaden the scope of the EITI report to include revenue streams (*i.e.*, payments made in cash or in kind) related to other natural resource sectors, such as forestry, or to those related to non-upstream activities, such as export.[89] Revenue streams required to be disclosed under the EITI include production entitlements to the host government and to its national, state-owned company; profits taxes; royalties; dividends; bonuses, such as signature, discovery and production bonuses; and license fees, including rental fees, entry fees and other considerations for licenses or concessions.[90] The EITI also requires the disclosure of any other "significant payment" and "material benefit" to the host government.[91] These include material infrastructure works,[92] as well as material social expenditures if mandated by law or contract.[93]

The EITI has long required the disclosure of the particular type of revenue stream and government entity that received each payment in the EITI Report.[94] Since 2013, the EITI has also required the public reporting of these revenue streams by individual company, rather than as aggregated data, and by project, provided that such project level disclosure is consistent with the European Union and Commission rules.[95]

Currently each implementing country's multi-stakeholder group determines which companies should be included in the EITI Report. Out of concern that developing countries have lost significant revenues "as a result of corrupt or illegal deals" involving "anonymous companies" that have "hidden behind a structure of complex and secret company ownership," [96] the EITI has recently commenced a process that, by January 2020, will require individual companies that bid for, operate or invest in the extractive assets of an EITI implementing country to identify their beneficial owners, disclose the level of ownership, and describe how ownership or control is exerted in the EITI Report.[97]

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[80] *Id.*

[81] *Id.*

[82] *See* Implementing EITI for Impact-A Handbook for Policymakers and Stakeholders (2011) ("EITI Handbook"), at xii.

[83] Notably, in enacting Section 13(q)'s mandatory disclosure requirement, Congress sought to complement the EITI's existing voluntary transparency efforts that too many countries and too many companies either had not joined or would not. 156 Cong. Rec. S3815 (May 17, 2010) (Sen. Lugar). *See also id.* S3815 (May 17, 2010) (Sen. Cardin) (stating that "We currently have a voluntary international standard for promoting transparency. A number of countries and companies have joined [EITI], an excellent initiative that has made tremendous strides in changing the cultural secrecy that surrounds extractive industries. But too many countries and too many companies remain outside this voluntary system."); *id.* S3818 (May 17, 2010) (Sen. Dodd) (stating that "broad new requirements for greater disclosure by resource extractive companies operating around the world . . . would be an important step" to complement EITI's "voluntary program").

[84] *See https://eiti.org/countries/* (last visited June 16, *2016*). Of those, 31 have achieved "EITI compliant" status, two have had their EITI status temporarily suspended, and the rest are implementing the EITI requirements but are not yet compliant. *Id.* When becoming an EITI candidate, a country must establish a multi-stakeholder group, including representatives of civil society, industry, and government, to oversee implementation of the EITI. The stakeholder group for a particular country agrees to the terms of that country's EITI plan, including the requirements for what information will be provided by the governments and by the companies operating in that country. Generally, under the EITI, companies and the host country's government submit payment information confidentially to an independent administrator selected by the country's multi-stakeholder group, which is frequently an independent auditor. The auditor reconciles the information provided to it by the government and by the companies and produces a report. While the information provided in the reports varies among countries, the reports must adhere to the EITI requirements provided in the EITI Standard (2016). *See* the EITI's Web site at *http://eiti.org (last visited June 16, 2016).*

[85] *See https://eiti.org/countries/other (last visited June 16, 2016).*

[86] The EITI Standard encompasses several documents fundamental to the EITI: (1) The "EITI Principles," which set forth the general aims and commitments of EITI participants; (2) the "EITI Requirements," which must be followed by countries implementing the EITI; (3) the "Validation Guide," which provides guidance on the EITI validation process; (4) the "Protocol: Participation of Civil Society," which provides guidance regarding the role of civil society in the EITI; and (5) documents relevant to the governance and management of the EITI (*e.g.*, the EITI Articles of Association, the EITI Openness Policy, and the EITI Code of Conduct). The EITI Handbook provides guidance on implementing the EITI, including overcoming common challenges to EITI implementation. All references to the EITI Standard are to the 2016 edition.

[87] The Executive Summary and other aspects of the USEITI 2015 Report are available at *https://useiti.doi.gov/about/report/*. In December 2012, the U.S. Government established a multi-stakeholder group, the USEITI Advisory Committee, headed by the Department of the Interior ("Department of Interior") and including the Departments of Energy and Treasury, as well as members of industry and civil society. *See* Multi-Stakeholder Group List of Members, *at http://www.doi.gov/eiti/FACA/upload/List-of-Members_03-16-15.pdf*. On March 19, 2014, the United States completed the process of becoming an EITI candidate country.

[88] Revenues reported to the federal government were for the fiscal year ended September 30, 2013. Corporate income taxes and most other payments were reported as of the calendar year ended December 31, 2013. *See* the 2015 USEITI Executive Summary at 2.

[89] *See* EITI Standard at 22–23 and EITI Handbook at 31 and 33. As an initial matter, each country's multi-stakeholder group is required to establish the thresholds for materiality and to determine which payments and revenues are material. While the EITI Standard requires each implementing country to provide export data for the fiscal year covered by the EITI Report, including total export volumes and the value of exports by commodity, the reporting of export payments by individual companies is not required and is at the option of the multi-stakeholder group.

[90] *See* EITI Standard at 23.

[91] *See* EITI Standard at 23.

[92] *See* EITI Standard at 24.

[93] *See* EITI Standard at 28. In addition, if the multi-stakeholder group determines that revenues from the transportation of oil, gas and minerals are material, the EITI expects governments and state-owned enterprises to disclose the revenues received. *See* EITI Standard at 24.

[94] *See, e.g.*, the EITI Source Book (2005) at 26.

[95] *See* EITI Standard at 25.

[96] *See* EITI Beneficial Ownership Fact Sheet (2016) *available at https://eiti.org/files/eiti_bo_factsheet_en_final_may_2016.pdf.*

[97] *See* EITI Standard at 19–21; *see also* EITI Beneficial Ownership Fact Sheet. Currently the EITI requires that, by January 1, 2017, each multi-stakeholder group publish a roadmap for disclosing the beneficial ownership information mandated in

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D. Summary of the Final Rules

The final rules, which are described in more detail in Part II below, are being adopted mostly as proposed, with a few significant changes based on feedback from commenters and other developments since the Proposing Release was issued. The final rules require resource extraction issuers to file a Form SD on an annual basis that includes information about payments related to the commercial development of oil, natural gas, or minerals that are made to governments. The following are key provisions of the final rules:

- The term "resource extraction issuer" means all U.S. companies and foreign companies that are required to file annual reports pursuant to Section 13 or 15(d) of the Exchange Act[98] and are engaged in the commercial development of oil, natural gas, or minerals.
- The term "commercial development of oil, natural gas, or minerals" means, consistent with Section 13(q), exploration, extraction, processing, and export, or the acquisition of a license for any such activity.
- The term "payment" means payments that are made to further the commercial development of oil, natural gas, or minerals, are "not de minimis," and includes taxes, royalties, fees (including license fees), production entitlements, and bonuses, consistent with Section 13(q), as well as community and social responsibility payments ("CSR payments") that are required by law or contract, dividends, and payments for infrastructure improvements.
- "Not de minimis" means any payment, whether a single payment or a series of related payments, that equals or exceeds $100,000 during the most recent fiscal year.
- A resource extraction issuer is required to disclose payments made by its subsidiaries and other entities under its control. Under the final rules, an issuer must disclose the payments made by entities that are consolidated, or its proportionate amount of the payments made by entities or operations that are proportionately consolidated, in its consolidated financial statements as determined by applicable accounting principles.[99]
- The term "project" means operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government. Agreements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project.
- The term "foreign government" means a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. It includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.
- The term "Federal Government" means the United States Federal Government.
- A resource extraction issuer must file its payment disclosure on Form SD using the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"), no later than 150 days after the end of its fiscal year. In addition to this EDGAR compilation of Form SD filings, a separate public compilation of the payment information submitted in the Form SD filings will be made available online by the Commission's staff.
- A resource extraction issuer must disclose the payment information and its identity publicly.
- The final rules include two exemptions that provide for transitional relief or delayed reporting in limited circumstances. These exemptions provide a longer transition period for recently acquired companies that were not previously subject to reporting under the final rules and a one-year delay in reporting payments related to exploratory activities. In addition, resource extraction issuers may apply for, and the Commission will consider, exemptive relief for other situations on a case-by-case basis pursuant to Rule 0–12 of the Exchange Act.[100]
- Resource extraction issuers may use alternative reports to comply with the final rules if the Commission determines that the requirements applicable to those reports are substantially similar to our own.[101]
- The Commission has determined that the current reporting requirements of the EU Directives, Canada's ESTMA, and the USEITI are substantially similar to the final rules, subject to the conditions specified below in Section II.J. Applications for additional alternative reporting determinations may be submitted under Rule 0–13 by issuers, governments, industry groups, and trade associations.
- Resource extraction issuers, including those using alternative reports, must present the payment disclosure using the eXtensible Business Reporting Language ("XBRL") electronic format and the electronic tags identified in Form SD. The tags listed in Form SD include those specified in Section 13(q), as well as tags for the type and total amount of payments made for each project, the type and total amount of payments made to each government, the particular resource that is the subject of commercial development, and the subnational geographic location of the project.
- Resource extraction issuers are required to comply with the rules starting with their fiscal year ending no earlier than September 30, 2018.

As we discuss more fully throughout the remainder of this release, in developing the final rules we have sought to balance the various statutory interests at issue in this rulemaking: On the one hand, providing transparency to help combat corruption and promote accountability, and on the other hand, doing so in ways that reflect a consideration of competition, efficiency, capital formation, and costs.[102] For example, with regard to the appropriate definition of project and the public disclosure of each issuer's annual reports—two discretionary decisions that, in many respects, are central to the transparency regime being adopted—we determined that the anti-corruption and accountability concerns underlying Section 13(q) will be significantly advanced by the public disclosure of each issuer's contract-based payment data. In making these discretionary decisions, we were mindful of the potential economic consequences that issuers might experience. As another example of our consideration of the various policy interests at stake, given the potential for competitive harm to issuers, we are adopting a targeted exemption to permit issuers to delay reporting payment information in connection with certain exploratory activities for one year. Further, we intend to consider using our existing authority under the Exchange Act to afford resource extraction issuers exemptive relief when other circumstances warrant. For example, issuers may seek exemptive relief when foreign laws may prohibit the Section 13(q) disclosures. This exemptive process should help mitigate the final rules' potential adverse effects on issuers while still preserving the transparency objectives of the statute. Similarly, we have adopted a revised definition of control and allowed for issuers to satisfy the rules' requirements by providing reports prepared in compliance with other jurisdictions' reporting requirements, which should

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2020. The EITI also recommends that each implementing country establish a public register of beneficial ownership to the extent none exists. *See* EITI Standard at 19–21. The EITI defines "beneficial ownership" to mean "the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity." EITI Standard at 20. We note that, in these ways, the EITI is concerned with more than just the actual revenue flows that result after a deal is entered, but is also concerned with providing transparency so that citizens and civil society can help ensure that the deals themselves do not involve corrupt or suspect arrangements. As we discuss below in Section II.E, we similarly believe that Section 13(q) is concerned not just with corruption after a deal is entered, but also with exposing potential corruption that may surround the underlying deal and the resulting payment flows.

[98] 15 U.S.C. 78m and 78o(d).

[99] We note that Exchange Act Rule 12b–21 provides that required information need be given only insofar as it is known or reasonably available to the registrant, subject to certain conditions. 17 CFR 240.12b–21.

[100] 17 CFR 240.0–12.

[101] *See* Item 2.01(c) of Form SD.

[102] *See* letter from API 1 (Feb. 16, 2016) ("API 1") (asserting that Congress intended that the Commission consider investor protection, as well as competition, efficiency, and cost concerns, when issuing the final rules under Section 13(q)).

help lower direct compliance costs for issuers.

II. Final Rules Under Section 13(q)

A. Definition of "Resource Extraction Issuer"

1. Proposed Rules

Section 13(q) defines a "resource extraction issuer" as an issuer that is "required to file an annual report with the Commission" and "engages in the commercial development of oil, natural gas, or minerals." [103] The proposed definition followed the statute without providing any exemptions based on size, ownership, foreign private issuer status,[104] or the extent of business operations constituting commercial development of oil, natural gas, or minerals.

We proposed to cover only issuers filing annual reports on Forms 10–K, 20–F, or 40–F.[105] Specifically, the proposed rules defined the term "resource extraction issuer" to mean an issuer that is required to file an annual report with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and that engages in the commercial development of oil, natural gas, or minerals. The proposed definition excluded issuers subject to Tier 2 reporting requirements under Regulation A or subject to Regulation Crowdfunding's reporting requirements. In addition, we did not subject investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") to the proposed rules.

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on whether certain categories of issuers should be exempt from the rules, such as smaller reporting companies, emerging growth companies, or foreign private issuers.[106] In addition to these categories addressed in existing Commission rules, we asked whether the Commission should exempt issuers based on a financial test that would measure the likelihood of the issuer making resource extraction payments above the proposed de minimis threshold. We offered the example of using annual revenues and net cash flows from investing activities to make this measurement. We also solicited comment on whether, instead of an exemption, the rules should provide for different disclosure and reporting obligations for certain types of issuers. Finally, we solicited comment on whether we should provide for a delayed implementation date for certain categories or types of issuers in order to provide them additional time to prepare for the disclosure requirements and the benefit of observing how other companies comply.[107]

Only one commenter on the Proposing Release recommended changing the scope of the definition of resource extraction issuer to add an exemption based on the type of issuer.[108] This commenter sought an exemption for foreign private issuers on the grounds that issuers should only bear the compliance burden associated with their home jurisdiction. Other commenters on the Proposing Release that addressed this topic were generally supportive of the proposed definition of "resource extraction issuer" and opposed excluding any category of issuer from the definition.[109] No commenter specifically addressed our exclusion of investment companies and companies required to file annual reports other than pursuant to Section 13 or 15(d) of the Exchange Act.

Of the commenters that expressed support for the proposed definition, several indicated that the proposed rules did not present unique challenges for particular categories of issuers and thus no exemptions were necessary.[110] One of these commenters stated that because smaller reporting companies and foreign private issuers were exposed to significant political regulatory risks, excluding them would undermine the value of the rules to investors.[111] The Department of Interior noted that the USEITI covers all companies that conduct extractive activities on public and tribal lands in the United States, without exemption.[112] It also recommended not providing an exemption that would allow an issuer to avoid reporting in a subsequent year based on financial metrics due to the "cyclical nature of extractive commodity prices."

3. Final Rules

We are adopting the proposed definition of "resource extraction issuer." Under the final rules, resource extraction issuers are issuers that are required to file an annual report with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and engage in the commercial development of oil, natural gas, or minerals.[113]

As discussed above, almost all of the commenters on the Proposing Release supported the proposed definition or called for the rules to cover all companies without exemptions. We disagree with the commenter that suggested foreign private issuers should be excluded from the definition of "resource extraction issuer." [114] This commenter stated that an exemption for all foreign private issuers was justifiable so that issuers only bear the compliance burden associated with one set of transparency rules. We note, however, that not all foreign private issuers will be required to report in other jurisdictions. Further, even if the issuer is required to file reports in another jurisdiction, an exemption for all foreign private issuers leaves open the possibility that the foreign private issuer's reporting could be pursuant to a jurisdiction's requirements that are significantly different than the Commission's rules. Instead, we believe that it is more appropriate to address concerns over duplicative reporting through the alternative reporting provisions we are adopting today.[115]

No commenters on the Proposing Release specifically requested that the Commission extend the disclosure requirements to foreign private issuers that are exempt from Exchange Act registration and reporting obligations pursuant to Exchange Act Rule 12g3–2(b). As we discussed in the Proposing Release,[116] we continue to believe that expanding the statutory definition to include such issuers is not appropriate because it would discourage reliance on Rule 12g3–2(b) and would be inconsistent with the effect, and we believe the purpose, of that rule.[117]

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[103] Section 13(q)(1)(D).

[104] We did not, however, propose to extend the disclosure requirements to foreign private issuers that are exempt from Exchange Act registration and reporting obligations pursuant to Exchange Act Rule 12g3–2(b).

[105] *See* Section II.A of the Proposing Release.

[106] *See* the definition of "smaller reporting company" in Exchange Act Rule 12b–2 [17 CFR 240.12b–2], the definition of "emerging growth company" in Exchange Act Section 3(a)(80) [15 U.S.C. 78c(a)(80)], and the definition of "foreign private issuer" in Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[107] For a discussion of this request for comment, see Section II.G below.

[108] *See* letter from BP p.l.c. (Feb. 16, 2016) ("BP").

[109] *See* letters from Africa Centre for Energy Policy (Feb. 16, 2016) ("ACEP"); Calvert Investments (Feb. 16, 2016) ("Calvert"); U.S. Department of Interior, Office of Natural Resources Revenue (Feb. 17, 2016) ("Department of Interior"); Form Letter A; Form Letter B; Global Witness (Feb. 16, 2016) ("Global Witness 1"); Oxfam America (Feb. 16, 2016) ("Oxfam 1"); Natural Resource Governance Institute (First of two letters on Feb. 16, 2016) ("NRGI 1"); Sarah Peck and Sarah Chayes (Feb. 16, 2016) ("Peck & Chayes"); PWYP–US 1; Jacqueline Quinones (Feb. 4, 2016) ("Quinones"); Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; and US SIF: The Forum for Sustainable and Responsible Investment (Mar. 8, 2016) ("USSIF").

[110] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[111] *See* letter from USSIF.

[112] Letter from Department of Interior.

[113] We continue to interpret "engages" as used in Section 13(q) and Rule 13q–1 to include indirectly engaging in the specified commercial development activities through an entity under a company's control. *See* Section II.D below for a discussion of "control" as used in the final rules. *See also* Proposing Release, n. 101.

[114] *See* letter from BP.

[115] *See* Section II.J below. We note that the commenter that raised these concerns indicated that if the Commission did not adopt an exemption for foreign private issuers, it would support an alternative reporting provision. *See* letter from BP.

Although, as we stated in the Proposing Release, we believe that the statutory language could reasonably be read either to cover or to exclude issuers that file annual reports on forms other than Forms 10–K, 20–F, and 40–F, we also continue to believe that covering other issuers would do little to further the transparency objectives of Section 13(q). It would, however, add costs and burdens to the existing disclosure regimes governing those categories of issuers. For example, and as noted in the Proposing Release, none of the Regulation A issuers with qualified offering statements between 2009 and 2014 appear to have been resource extraction issuers at the time of those filings.[118] That remains the case for Regulation A issuers that qualified offering statements in 2015. We also continue to believe that it is unlikely that an entity that fits within the definition of an “investment company” [119] would be one that is “engag[ing] in the commercial development of oil, natural gas, or minerals.” Accordingly, the final rules we are adopting will not apply to such issuers.[120]

B. Definition of “Commercial Development of Oil, Natural Gas, or Minerals”

1. Proposed Rules

Section 13(q) defines “commercial development of oil, natural gas, or minerals.” Consistent with the statute, we proposed defining “commercial development of oil, natural gas, or minerals” as exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity. Although we have discretionary authority to include other significant activities relating to oil, natural gas, or minerals,[121] we did not propose expanding the definition beyond the explicit terms of Section 13(q).

As discussed in the Proposing Release, the proposed definition of “commercial development” was intended to capture only activities that are directly related to the commercial development of oil, natural gas, or minerals, and not activities ancillary or preparatory to such commercial development.[122] We also proposed additional guidance on several terms contained within the definition of “commercial development of oil, natural gas, or minerals.” [123] For example, we identified activities that would be covered by the terms “extraction” and “export,” and we provided examples of the activities that would be covered by the term “processing.” [124]

2. Comments on the Proposed Rules

a. Scope of the Definition

In the Proposing Release we solicited comment on how we should define “commercial development of oil, natural gas, or minerals.” For example, we asked whether the definition should include any activities that were not expressly identified in the statute and what definition would further the U.S. Government's foreign policy objective of battling corruption through improved transparency. In light of the Commission's general exemptive authority, we solicited comment on whether certain activities listed in the statute should be excluded from the definition. We also sought input on whether activities that are ancillary or preparatory to resource extraction should be included in the activities covered by the rules and whether the Commission should provide additional guidance on the types of activities that would be considered “directly related” to the “commercial development of oil, natural gas, or minerals.”

All but one of the commenters that addressed this aspect of the Proposing Release supported the proposed definition,[125] stating that it was consistent with established international transparency standards.[126] An industry commenter disputed that view, but otherwise generally supported the proposed definition.[127] The Department of Interior also supported the definition despite noting that the USEITI does not cover revenues from processing, exporting, or the acquisition of licenses to engage in those activities.[128]

b. Guidance on “Extraction,” “Processing,” and “Export”

In the Proposing Release we solicited comment on whether additional guidance should be provided on the activities covered by the terms “extraction,” “processing,” or “export” and whether the proposed definitions and guidance were too narrow or too broad. For the term “export,” we specifically asked whether the definition should be broadened to include all transportation from one country to another, regardless of ownership interest or whether the resource originated in the country from which it is being transported.

Several commenters supported the proposed definition of “extraction” and the proposed guidance on “processing.” [129] Certain commenters, however, recommended providing additional guidance on “processing.” [130]

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[116] *See* Section II.A. of Proposing Release.

[117] As we discussed in the Proposing Release, Rule 12g3–2(b) provides relief to foreign private issuers that are not currently Exchange Act reporting companies (*i.e.,* they are neither listed nor have made a registered offering in the United States) and whose primary trading market is located outside the United States. In these circumstances, we do not believe it would be appropriate to require foreign private issuers whose connections with the U.S. markets do not otherwise require them to make reports with the Commission to undertake such an obligation solely for the purpose of providing the required payment information. Moreover, imposing a reporting obligation on such issuers would seem to go beyond what is contemplated by Section 13(q), which defines a “resource extraction issuer” as an issuer that is “required to file an annual report with the Commission.”

[118] Based on a review of their assigned Standard Industrial Classification (SIC) codes. We recognize that Tier 2 of Regulation A, with a maximum offering amount of $50 million, is still relatively new and that the types of companies previously or currently using Regulation A may not be representative of its future use. In addition, since Regulation A issuers were not required to file annual reports when Section 13(q) was enacted, it seems unlikely that Congress contemplated Regulation A issuers having to comply with Section 13(q). Given the added costs and burdens discussed in the Proposing Release, we continue to believe that it is not prudent to extend the rule to Regulation A issuers at this time. *See* Proposing Release, Section II.A.

[119] *See* Section 3(a)(1) of the Investment Company Act (15 U.S.C. 80a–3(a)(1)).

[120] *See* Proposing Release, Section II.A for a discussion of the factors we considered.

[121] *See* Section 13(q)(1)(A).

[122] *See* Proposing Release, at Section II.B.

[123] *Id.*

[124] *Id. See also* Section II.B.1.3 below for a discussion of this guidance.

[125] *See* letters from ACEP; Department of Interior; Exxon Mobil Corp. (Mar. 8, 2016) (“ExxonMobil 2”); Global Witness 1; Oxfam 1; and PWYP–US 1. One commenter, Encana Corporation, did not expressly support or object to our definition of commercial development of oil, natural gas, or minerals, but rather requested that the Commission provide additional guidance “to clarify the activities covered by the proposed terms used to define ‘commercial development of oil, natural gas, or minerals.’ ” *See* letter from Encana Corporation (Jan. 25, 2016) (“Encana”). Specifically, Encana requested guidance that would “reflect consistency with the definition of “Oil and Gas Producing Activities” in Rule 4–10 of Regulation S–X and “exclude post-extraction activities such as refining, smelting, processing, marketing, distribution, transportation, or export.”

[126] *See, e.g.,* letter from PWYP–US 1.

[127] *See* letter from ExxonMobil 2.

[128] *See* letter from Department of Interior.

[129] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[130] *See* letters from Encana and Petróleo Brasileiro S.A. (Feb. 16, 2016) (“Petrobras”).

For example, one commenter requested clarification that "processing" only includes "initial processing activities that are integrated with extraction operations" and "does not extend to ancillary or preparatory activities such as manufacturing equipment or construction of extraction sites." [131] Another commenter requested additional guidance on the scope of "midstream" activities that would be covered by "processing." [132]

As for the definition of "export," one commenter requested clarification on whether that term covers commodity trading-related activities and situations such as when an issuer exports oil, natural gas, or minerals purchased from a government or from a state-owned company.[133] Another commenter requested clarification of the term "mineral," stating that it could have a variety of meanings, such as homogeneous crystalline substances (which would exclude gravel or non-crystalline rocks) or naturally occurring inorganic solids (which would exclude coal).[134]

3. Final Rules

We are adopting the proposed definition of "commercial development of oil, natural gas, or minerals" but with additional guidance on its application. Although commenters pointed out that both the statutory definition and the proposed definition are broader than the activities typically covered by the EITI [135] and, in some respects, other comparable disclosure regimes,[136] most commenters supported the proposal.

Despite one commenter's recommendation that the final rules exclude "processing" and "export," both terms are expressly included in the statutory definition, and we believe that these are important aspects of the commercial development of oil, natural gas, or minerals.[137] Although there are differences between the definition we are adopting today and that used in other transparency regimes, we believe our approach enhances international transparency by covering activities similar to those covered by the EU Directives, Canada's ESTMA, and the EITI, while remaining consistent with Section 13(q).[138] In this regard, the final rules focus only on issuers engaged in the extraction or production of oil, natural gas, or minerals. Where a service provider makes a payment to a government on behalf of a resource extraction issuer that meets the definition of "payment," the resource extraction issuer will be required to disclose such payment.

Although we are adopting the general definition of "commercial development of oil, natural gas, or minerals" as proposed, as well as reiterating much of the related guidance, we are revising certain key terms found in that definition in response to commenters' concerns. We note, however, that whether an issuer is a resource extraction issuer ultimately depends on the specific facts and circumstances. We are adopting the definition of "extraction" as proposed. Thus, "extraction" means the production of oil and natural gas as well as the extraction of minerals.[139] Also as proposed, "processing" includes, but is not limited to, midstream activities such as the processing of gas to remove liquid hydrocarbons, the removal of impurities from natural gas prior to its transport through a pipeline, and the upgrading of bitumen and heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal. It also includes the crushing and processing of raw ore prior to the smelting phase.[140] "Processing" does not include downstream activities, such as refining or smelting. As we noted in the Proposing Release, the focus of the disclosures required by Section 13(q) is on transparency in connection with the payments that resource extraction issuers make to governments. Those payments are primarily generated by "upstream" activities like exploration and extraction and not in connection with refining or smelting.[141] Finally, we note that including refining or smelting within the rules under Section 13(q) would go beyond what is contemplated by the statute, EITI, EU Directives, and ESTMA.[142]

The final rules define "export" as the transportation of a resource from its country of origin to another country by an issuer with an ownership interest in the resource, with certain exceptions described below.[143] This definition of the term "export" reflects the significance of the relationship between upstream activities such as exploration and extraction and the categories of payments to governments identified in the statute. In contrast, we do not believe that Section 13(q) was intended to capture payments related to transportation on a fee-for-service basis across an international border by a service provider with no ownership interest in the resource.[144] Nor do we believe that "export" was intended to capture activities with little relationship to upstream or midstream activities, such as commodity trading-related activities. Accordingly, the definition of "export" we are adopting does not cover the movement of a resource across an international border by a company that (a) is not engaged in the exploration, extraction, or processing of oil, natural gas, or minerals and (b) acquired its ownership interest in the resource directly or indirectly from a foreign government or the Federal Government.[145] The definition does cover, however, the purchase of such government-owned resources by a company otherwise engaged in resource extraction due to the stronger link between the movement of the resource across an international border and the upstream development activities. This link would be particularly strong in instances where the company is repurchasing government production entitlements that were originally extracted by that issuer.[146]

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[131] *See* letter from Encana.

[132] *See* letter from Petrobras.

[133] *See* letter from Poretti.

[134] *See* letter from Keith Bishop (Jan. 5, 2016) ("Bishop").

[135] An EITI plan typically covers the "upstream activities" of exploration and production but not "downstream activities," such as processing or export. The relevant multi-stakeholder group does, however, have the option of expanding the scope of its EITI program by including some downstream activities. *See* the EITI Handbook, at 35.

[136] For example, as discussed in Section I.C.1–2 above, processing, export, and the acquisition of licenses are not specifically mentioned by the EU Directives, and ESTMA generally does not include processing or export.

[137] *See* letter from Encana. In light of the statutory definition and the purpose of Section 13(q), we are not narrowing the definition of "commercial development" to make it consistent with the definition of "Oil and Gas Producing Activities" in Rule 4–10 of Regulation S–X. The definition of "Oil and Gas Producing Activities" in Rule 4–10 of Regulation S–X excludes all natural resources other than oil and gas. Using that definition would exclude minerals and be contrary to the plain language of Section 13(q). Moreover, narrowing the definition in that manner would limit the level of transparency provided by the final rules and would be significantly different from the approach taken in the EU Directives, ESTMA, and the EITI. In the 2012 Adopting Release we took the same approach in response to similar suggestions from commenters. *See* 2012 Adopting Release, Section II.C.3

[138] The EU Directives cover "exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials." *See, e.g.*, EU Accounting Directive, Art. 41(1). ESTMA defines "commercial development of oil, gas or minerals" as "(a) the exploration or extraction of oil, gas or minerals; (b) the acquisition or holding of a permit, licence, lease or any other authorization to carry out any of the activities referred to in paragraph (a); or (c) any other prescribed activities in relation to oil, gas or minerals."

[139] Proposed Item 2.01(c)(5) of Form SD.

[140] *See* proposed Instruction 7 to Item 2.01 of Form SD.

[141] We also noted in the Proposing Release that in other contexts Congress has treated midstream activities like "processing" and downstream activities like "refining" as separate activities, which further supports our view that Congress did not intend to include "refining" and "smelting" as "processing" activities. For example, the Sudan Accountability and Divestment Act of 2007 ("SADA"), which also relates to resource extraction activities, specifically includes "processing" and "refining" as two distinct activities in its list of "mineral extraction activities" and "oil-related activities . . ." *See* 110 P.L. No. 174 (2007). Similarly, the Commission's oil and gas disclosure rules exclude refining and processing from the definition of "oil and gas producing activities" (other than field processing of gas to extract liquid hydrocarbons by the company and the upgrading of natural resources extracted by the company other than oil or gas into synthetic oil or gas). *See* Rule 4–10(a)(16)(ii) of Regulation S–X [17 CFR 210.4–10(a)(16)(ii)] and 2012 Adopting Release, n. 108.

[142] *See, e.g.*, the EITI Handbook, at 35; EU Accounting Directive, Art. 41(1) (including "exploration, prospection, discovery, development, and extraction" in the definition of an "undertaking active in the extractive industry," but not including refining or smelting). *See also* ESTMA Guidance at Section 1 ("Commercial development generally does not include post-extraction activities. Refining, smelting or processing of oil, gas or minerals, as well as the marketing, distribution, transportation or export, is generally not captured as commercial development for the purposes of the Act. However, certain initial processing activities are often integrated with extraction operations and may comprise commercial development of oil, gas or minerals.")

[143] *See* Item 2.01(d)(4) of Form SD.

Contrary to the recommendation of one commenter, we have not defined "minerals" in the final rules.[147] Although ESTMA defines minerals as "all naturally occurring metallic and non-metallic minerals, including coal, salt, quarry and pit material, and all rare and precious minerals and metals," the EU Directives do not provide a definition.[148] We believe that this term is commonly understood in the industry,[149] as are the terms "oil" and "natural gas," and is not "indefinite" as claimed by this commenter.[150] We also believe that the commonly understood meaning of "mineral" is consistent with the definition of that term in ESTMA described above.

The definition of "commercial development of oil, natural gas, or minerals" in the final rules does not capture activities that are ancillary or preparatory to such commercial development.[151] We do not consider an issuer that is only providing products or services that support the exploration, extraction, processing, or export of such resources to be a "resource extraction issuer," such as an issuer that manufactures drill bits or provides hardware to help companies explore and extract.[152] Similarly, an issuer engaged by an operator to provide hydraulic fracturing or drilling services, thus enabling the operator to extract resources, is not a resource extraction issuer. Nevertheless, a resource extraction issuer must disclose payments when a service provider makes a payment to a government on its behalf that meets the definition of "payment" in the final rules.[153]

C. Definition of "Payment"

1. Proposed Rules

Section 13(q) defines "payment" to mean a payment that:

- Is made to further the commercial development of oil, natural gas, or minerals;
- is not de minimis; and
- includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the EITI's guidelines (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.

The proposed definition of "payment" included the specific types of payments identified in the statute, as well as payments of certain dividends and infrastructure payments.

Consistent with Section 13(q), the proposed rules required a resource extraction issuer to disclose taxes. In addition, the proposed rules included an instruction stating that a resource extraction issuer would be required to disclose payments for taxes levied on corporate profits, corporate income, and production, but would not be required to disclose payments for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes.[154] In response to earlier concerns expressed about the difficulty of allocating certain payments that are made for obligations levied at the entity level, such as corporate taxes, to the project level,[155] the proposed rules provided that issuers could disclose those payments at the entity level.[156]

Also consistent with Section 13(q), the proposed rules required a resource extraction issuer to disclose fees, including license fees, and bonuses paid to further the commercial development of oil, natural gas, or minerals. The proposed rules included an instruction stating that fees include rental fees, entry fees, and concession fees, and that bonuses include signature, discovery, and production bonuses.[157] The fees and bonuses identified, however, were not an exclusive list, and under the proposed rules, the issuer could have been required to disclose other fees and bonuses as well.

For payments of dividends, which, along with infrastructure payments, is not specified in the statute, an instruction in the proposed rules stated that an issuer generally would not need to disclose dividends paid to a government as a common or ordinary shareholder of the issuer as long as the dividend is paid to the government under the same terms as other shareholders.[158] Under the proposed rules, the issuer would, however, have been required to disclose any dividends paid to a government in lieu of production entitlements or royalties. Under the proposed approach, ordinary dividend payments were not considered part of the commonly recognized revenue stream, because they are not made to further the commercial development of oil, natural gas, or minerals.[159] We also proposed requiring a resource extraction issuer to disclose in-kind payments.[160] The proposed rules specified that an issuer must report in-kind payments at cost, or if cost was not determinable, fair market value, and required the issuer to provide a brief description of how the monetary value was calculated.[161]

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[144] It is noteworthy that Section 13(q) includes export, but not transportation, in the list of covered activities. In contrast, SADA specifically includes "transporting" in the definition of "oil and gas activities" and "mineral extraction activities." The inclusion of "transporting" in SADA, in contrast to the language of Section 13(q), suggests that the term export means something different than transportation.

[145] *See* Item 2.01(d)(4) of Form SD. *See also* letter from Poretti (seeking clarification of the scope of "export" under the rules).

[146] *See* Section C below for a more detailed discussion of when and how such payments must be reported.

[147] *See* letter from Bishop.

[148] ESTMA, Section 2.

[149] In this regard, we note that none of the industry commenters, or for that matter any commenters other than Bishop, indicated a need to define this term. We believe that this also supports our view that, as commonly used when referring to mineral resources, "mineral" refers to the broader, non-technical meaning, which is any organic or inorganic natural resource extracted from the earth for human use.

[150] We do note, however, that we consider the commonly understood meaning of "mineral" to include, at a minimum, any solid material for which an issuer with mining operations would provide disclosure under the Commission's existing disclosure requirements and policies, including Industry Guide 7, or any successor requirements or policies. The Commission's staff has previously provided similar guidance. *See* Disclosure of Payments by Resource Extraction Issuers FAQ 3 (May 30, 2013), *available at https://www.sec.gov/divisions/corpfin/guidance/resourceextraction-faq.htm.*

[151] This is consistent with Canada's ESTMA. *See* ESTMA Guidance at Section 1 ("Commercial development is not intended to extend to ancillary or preparatory activities for the exploration or extraction of oil, gas or minerals. For example, activities such as manufacturing equipment or construction of extraction sites would not be included.")

[152] Marketing activities would also not be included. Section 13(q) does not include marketing in the list of activities covered by the definition of "commercial development." In addition, including marketing activities within the final rules under Section 13(q) would go beyond what is covered by the EITI and other international regimes. *See, e.g.,* the EITI Handbook, at 35. For similar reasons, the definition of "commercial development" does not include activities relating to security support. *See* 2012 Adopting Release at Section II.D for a related discussion of payments for security support.

[153] As we discuss in Section II.I.3 below, we are providing for delayed reporting for payments related to exploratory activities. *See* Item 2.01(b) of Form SD.

[154] *See* proposed Instruction 8 to Item 2.01 of Form SD.

[155] *See* 2012 Adopting Release, n.155 and accompanying text.

[156] *See* proposed Instruction 4 to Item 2.01 of Form SD.

[157] *See* proposed Instruction 9 to Item 2.01 of Form SD.

[158] *See* proposed Instruction 10 to Item 2.01 of Form SD.

The proposed rules defined a "not de minimis" payment as one that equals or exceeds $100,000, or its equivalent in the issuer's reporting currency, whether made as a single payment or series of related payments.[162] Finally, the proposed rules required disclosure of activities or payments that, although not within the categories included in the proposed rules, are part of a plan or scheme to evade the disclosure requirements under Section 13(q).[163]

2. Comments on the Proposed Rules

a. Types of Payments

In the Proposing Release we solicited comment on whether we should add other payment types, such as CSR payments, or remove certain payment types from the proposed list. In particular, we asked whether other types of payments should be considered part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. We also asked whether the Commission should provide additional guidance on how to interpret the proposed list of covered payment types, particularly whether additional guidance should be provided on the types of fees or bonuses that would be covered by the rules and how to distinguish CSR payments from infrastructure payments. Finally, we also included a request for comment on whether the rules should prescribe a specific method for determining the fair market value of in-kind payments.

Several commenters supported the proposed definition of "payment," [164] while others recommended adding additional payment types or changing our approach to particular payment types. A number of commenters, including one industry commenter, recommended adding CSR payments to the definition.[165] These commenters stated that CSR payments are common in the industry and should be considered part of the commonly recognized revenue stream for resource extraction.[166] One of these commenters also questioned the characterization in the Proposing Release that the European Union and Canada are consistent in not requiring CSR payments.[167] An industry commenter was particularly concerned with distinguishing between CSR payments and infrastructure payments and recommended requiring both types of payments when required by contract with the host government.[168] Another industry commenter, however, opposed including CSR payments, stating that those payments were not part of the commonly recognized revenue stream due to their "philanthropic or voluntary . . . nature." [169]

Several commenters recommended adding commodity trading-related payments to the definition of "payment." [170] These commenters stated that purchases of resources sold by a government or a state-owned company are prone to corruption and are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. They also stated that in many countries commodity trading-related payments constitute the largest revenue stream to the government. Another commenter expressed uncertainty as to whether such payments were covered by the proposed rules and noted that confusion may arise for others as well since the current EITI Standard leaves it to the discretion of a country's multi-stakeholder group whether to require the reporting of payments to governments for the purchase of natural resources by buying companies.[171] Other commenters stated that covering commodity trading-related payments would inappropriately expand the reach of the rules beyond payments associated with in-country extractive development and would substantially increase the cost of reporting without apparent benefit.[172] These commenters stated that such an approach would double-count government revenues given that the government's share of production is already required to be disclosed under the rules.

Beyond CSR payments and commodity trading-related payments, commenters recommended that the rules cover other types of payments, such as when an issuer covers government expenses, provides jobs to persons related to government officials, or invests in companies created by officials or related persons.[173] For example, one commenter recommended that guidance be added to either the discussion of reportable payments or the proposed anti-evasion provision indicating that payments in excess of the de minimis threshold should be disclosed if: (1) The payments were subtracted from or substituted for otherwise reportable payments; (2) the payments were requested by or associated with a government official suspected of corruption; or (3) the payments raise corruption concerns, including by creating an appearance of possible corruption, and those payments would otherwise be undisclosed to the public.[174] Another commenter recommended including fines and penalties in the definition.[175] This commenter also stated that the EITI standard requires "any other significant payments and material benefit to government" to be reported and that the USEITI's multi-stakeholder group has interpreted that to include penalties.[176] This commenter noted that fines and penalties represent significant payments to governments and that Section 13(q) instructs the Commission to define payment consistently with the EITI standard.

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[159] *See* Proposing Release, at Section II.C.1.

[160] *See* proposed Instruction 11 to Item 2.01 of Form SD.

[161] *See* proposed Instruction 11 to Item 2.01 of Form SD. *See also* Section 3(e) of ESTMA ("[T]he value of a payment in kind is the cost to the entity—or, if the cost cannot be determined, the fair market value—of the goods and services that it provided."). The EU Directives do not specify how in-kind payments should be calculated, but require "supporting notes . . . to explain how their value has been determined." *See, e.g.,* Section 43(3) of the EU Accounting Directive.

[162] *See* proposed Item 2.01(c)(8)(ii) of Form SD. For example, a resource extraction issuer that paid a $150,000 signature bonus would be required to disclose that payment. The proposed definition also clarified that disclosure would be required for related periodic payments (*e.g.,* rental fees) when the aggregate amount of such payments exceeds the payment threshold. This is similar to other instructions in our rules requiring disclosure of a series of payments. *See, e.g.,* Instructions 2 and 3 to Item 404(a) of Regulation S–K (17 CFR 229.404(a)). Therefore, under the proposed rules, a resource extraction issuer obligated to pay royalties to a government annually and that paid $10,000 in royalties on a monthly basis to satisfy its obligation would be required to disclose $120,000 in royalties.

[163] *See* proposed Rule 13q–1(b).

[164] *See* letters from ACEP; Encana; Department of Interior; Global Witness 1; Oxfam 1; PWYP–US 1; and USAID.

[165] *See* letters from ACEP; Prof. Harry G. Broadman and Bruce H. Searby (Jan. 25, 2016) ("Broadman & Searby"); Exxon Mobil Corp. (Feb. 16, 2016) ("ExxonMobil 1"); Eugen Falik (Mar. 7, 2016) ("Falik"); Global Witness 1; Oxfam 1; PWYP–US 1; and USAID.

[166] *See, e.g.,* Broadman & Searby and ExxonMobil 1.

[167] *See* Broadman & Searby (stating that "there is no consistency after all between Europe's and Canada's regimes to which the Commission should adhere for the sake of equalizing standards and reporting burdens."). *See* note 212 below and accompanying text.

[168] *See* letter from ExxonMobil 1.

[169] *See* letter from Encana.

[170] *See* letters from PWYP–US 1; NRGI 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[171] *See* letter from Poretti (noting that some EITI reports (*e.g.,* Iraq's EITI Reports for the years 2011, 2012, and 2013) contain information about payments reported by buyers of exported crude oil).

[172] *See* letters from API (Mar. 8, 2016) ("API 2") and ExxonMobil 2.

[173] *See* letters from Bean and USAID.

[174] *See* letter from Bean.

Commenters supported the proposed requirement for issuers to disclose the method they used to calculate the value of in-kind payments.[177] One commenter recommend that in-kind payments be reported at cost or fair market value, as determined by the issuer, rather than allowing only the use of fair market value if cost is not determinable.[178] This commenter also noted that, under ESTMA, in-kind payments are reported at the cash value of the production entitlements that the payee takes possession of during the relevant financial period. Several other commenters supported requiring issuers to disclose the volume of resources associated with the in-kind payments.[179] These commenters noted that the EU Directives require disclosure of volume and that such a requirement would enhance government accountability and understanding of an issuer's methodology.[180] Another commenter, however, stated that adding a requirement for issuers to report the volume of in-kind payments is unnecessary and could cause competitive harm by effectively disclosing contractual selling prices.[181] This commenter stated that reporting fair market value of in-kind payment types was sufficient.[182] Another commenter requested that the Commission provide examples for determining fair market value for in-kind payments.[183]

A number of commenters also requested additional guidance on the types of payments covered by the rules.[184] Several commenters supported including a non-exclusive list of the types of royalties in a manner similar to what was proposed for fees and bonuses.[185] The recommended instruction would further clarify that the examples of fees, bonuses, and royalties are non-exclusive and the list of royalties would include unit based, value-based, and profit-based royalties. One commenter requested additional guidance on how to isolate the corporate income tax payments made on income generated from the commercial development of oil, natural gas, or minerals given that income earned from business activities beyond resource extraction would be taxed as well.[186] Another commenter recommended clarifying in Form SD that payments may be reported either on a cash basis or on an accrual basis.[187] This commenter noted the contrast between the Proposing Release, which seems to leave open the question as to whether an issuer may elect to present payments on either basis, and prior staff guidance, which indicates that payment information is required to be presented on an unaudited, cash basis for the year in which the payments are made.[188]

b. The "Not De Minimis" Requirement

A key component of the definition of "payment" is how "not de minimis" should be defined. In the Proposing Release, we solicited comment on various aspects of this definition. For example, we requested comment on whether a $100,000 threshold is too low or too high, whether a different threshold should apply to smaller reporting companies or other categories of issuers, and whether we should provide additional guidance on how and when an issuer would have to aggregate a series of related payments. If commenters thought a different threshold should apply, we asked for their input on how that threshold would interact with the thresholds established by other countries. We also asked whether the final rules should include a mechanism to adjust periodically the de minimis threshold to reflect the effects of inflation.

Most commenters supported the proposed definition of "not de minimis." [189] For example, the Department of Interior noted that it was the same standard that is used in its disclosure of revenue data.[190] It also recommended not including an automatic adjustment mechanism because a stable threshold would allow the USEITI and industry to plan better for making ongoing disclosures. Several commenters also noted the similarity of the proposed threshold to those used in the European Union and Canada.[191] Another commenter stated that the threshold was "unreasonably low for companies working on massive scale projects" and would thus be too costly.[192] Finally, one commenter requested clarification on whether the de minimis threshold is meant to be calculated based on the currency conversion in effect at the time of payment, or at the end of the period covered by the report.[193]

c. Anti-Evasion Provision

In the Proposing Release we also solicited comment on whether the proposed anti-evasion provision would promote compliance with the disclosure requirements and whether we should provide additional guidance on when the anti-evasion provision would apply. Several commenters supported this provision.[194] As described above, one commenter recommended that guidance be added to either the discussion of reportable payments or the proposed anti-evasion provision indicating that payments in excess of the de minimis threshold should be disclosed if: (1) The payments were subtracted from or substituted for otherwise reportable payments; (2) the payments were requested by or associated with a government official suspected of corruption; or (3) the payments raise corruption concerns, including by creating an appearance of possible corruption, and those payments would otherwise be undisclosed to the public.[195] Several other commenters endorsed the proposed anti-evasion provision, but recommended adding language stating that "activities and payments must not be artificially structured, split or aggregated to avoid application of the rules."[196]

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[175] *See* letter from TI–USA.

[176] Section 4.1(b) of EITI Standard.

[177] *See* letters from Encana and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[178] *See* letter from Encana.

[179] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[180] *See* EU Accounting Directive, Art. 43(3) ("Where payments in kind are made to a government, they shall be reported in value and, where applicable, in volume.")

[181] *See* letter from ExxonMobil 2.

[182] Although ExxonMobil only mentions using fair market value and not cost, from the context it does not appear to be recommending a change to our proposed approach that calls for cost reporting, or if cost is not determinable, fair market value.

[183] *See* letter from Petrobras.

[184] *See* letters from Encana; ExxonMobil 1; Petrobras; and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[185] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[186] *See* letter from Petrobras.

[187] *See* letter from Cleary.

[188] *See* Dodd-Frank Wall Street Reform and Consumer Protect Act FAQs: Disclosure of Payments by Resource Extraction Issuers (May 30, 2013) ("Resource Extraction FAQs"), FAQ 7, *available at https://www.sec.gov/divisions/corpfin/guidance/faq.htm.*

[189] *See* letters from Department of Interior; Form Letter A; PWYP–US 1; and Quinones. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[190] *See* letter from Department of Interior.

[191] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[192] *See* letter from Nouveau (Feb. 16, 2016) ("Nouveau").

[193] *See* letter from Bishop.

[194] *See* letters from Bean; PWYP–US 1; Sen. Cardin et al.; and Sen. Lugar et al. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[195] *See* letter from Bean.

3. Final Rules

We are adopting the proposed definition of "payment" with certain changes to the rule and related guidance. The definition we are adopting includes the specific types of payments identified in the statute as well as CSR payments that are required by law or contract, payments of certain dividends, and payments for infrastructure. As we noted in the Proposing Release, the statute and the EITI guidelines include most of the types of payments included in the definition.[197] Most of the components of our definition of "payment" are also used in the EU Directives and ESTMA. Thus, including them is consistent with the statutory directive for our rules to support international transparency promotion efforts.

In addition to the types of payments expressly included in the definition of payment in the statute, Section 13(q) provides that the Commission include within the definition "other material benefits" that it determines are "part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals." According to Section 13(q), these "other material benefits" must be consistent with the EITI's guidelines "to the extent practicable."[198] The other material benefits we have included in the final rules—CSR payments required by law or contract, dividends, and infrastructure payments—are all found in the EITI guidelines as well.[199]

Unlike with the 2012 Proposing Release, none of the commenters on the Proposing Release suggested a broad, non-exhaustive list of payment types or a category of "other material benefits." In light of this, and because we continue to believe that Section 13(q) directs us to make an affirmative determination that the other "material benefits" are part of the commonly recognized revenue stream, we are not adopting such a non-exclusive list or category. Accordingly, under the final rules, resource extraction issuers will be required to disclose only those payments that fall within the specified list of payment types in the rules.

We have determined that the payment types specified in the rules represent material benefits that are part of the commonly recognized revenue stream and that otherwise meet the definition of "payment." In support of this determination, we note that the EU Directives and ESTMA also require most of these payment types to be disclosed.[200] In this regard, we also looked to the EITI and determined that it would be appropriate to add some of the types of payments included under the EITI that are not explicitly mentioned under Section 13(q). As such, the final rules require disclosure of CSR payments that are required by law or contract, dividend, and infrastructure payments. We note that none of the commenters on the Proposing Release objected to the inclusion of dividend and infrastructure payment, while views were mixed on CSR payments. We also note that payments for infrastructure improvements have been required under the EITI since at least 2011,[201] payments for dividends since at least 2005,[202] and CSR payments that are required by law or contract since 2013.[203]

The proposed rules did not require the disclosure of CSR payments. We noted in the Proposing Release that other recently enacted international transparency promotion efforts, such as the EU Directives and ESTMA, do not include CSR payments as a specified covered payment type. Although we noted that the EITI includes the disclosure of material "social expenditures" in an EITI report when those expenditures are required by law or contract,[204] we stated that disclosure of CSR payments appeared to be outside of the scope of the more recent international efforts in the European Union and Canada.[205] In addition, we noted that there was no clear consensus among the commenters on whether the proposed rules should include CSR payments as part of identified payments that are required to be disclosed.[206] Nevertheless, we sought public input on the matter.

Upon further consideration of our approach in the proposed rules and taking into account the comments discussed above, we believe that CSR payments that are required by law or contract are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[207] As noted above, CSR payments that are required by law or contract must be disclosed under the EITI. Also, as noted by one commenter, "[p]ublic manifestations of how common in [the resource extraction] industry CSR payments have become include prolific conferences, studies, guidance, and compliance manuals."[208]

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[196] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[197] *See* EITI Standard, at 23.

[198] 15 U.S.C. 78m(q)(1)(C)(ii).

[199] *See* the EITI Standard at Sections 4.1(b) (dividends), 4.3 (infrastructure payments), and 6.1 (social expenditures).

[200] *See, e.g.,* EU Accounting Directive, Art. 41(5) and Section 2 of ESTMA (both including, as discussed in Section I.C above, the following payment types: Production entitlements, taxes, royalties, dividends, bonuses, fees, and infrastructure payments).

[201] In February 2011, the EITI Board issued revised EITI rules that require participants to develop a process to disclose infrastructure payments under an EITI program. *See* EITI Rules 2011, *available at http://eiti.org/document/rules. See also* EITI Requirement 9(f) in EITI Rules 2011, at 22 ("Where agreements based on in-kind payments, infrastructure provision or other barter-type arrangements play a significant role in the oil, gas or mining sectors, the multi-stakeholder group is required to agree [to] a mechanism for incorporating benefit streams under these agreements in to its EITI reporting process. . . .") and EITI Standard, at 24 ("The multi-stakeholder group and the independent administrator are required to consider whether there are any agreements, or sets of agreements, involving the provision of goods and services, including loans, grants and infrastructure works, in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. . . Where the multistakeholder group concludes that these agreements are material, the multistakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams.").

[202] *See* EITI, Source book, Chapter 2, Section D (Mar. 2005).

[203] As is currently the case under the 2016 EITI Standard, the 2013 version of the EITI Standard required social contribution payments to be disclosed if the company was legally or contractually required to make those payments.

[204] *See* EITI Standard, at 28 ("Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, the EITI Report must disclose and, where possible, reconcile these transactions.").

[205] *See* EU Accounting Directive, Art. 41(5) and ESTMA, Section 2, both of which list types of payments covered by their respective disclosure regulations without including CSR payments. *But see* ESTMA Guidance, Section 3.5 (outlining that "payments made for corporate social responsibility purposes" may be required to be disclosed if "made in lieu of one of the payment categories that would need to be reported under [ESTMA]").

[206] *See* Proposing Release, n.148 and accompanying text.

[207] We note that our decision to require disclosure of such payments is further supported by the fact that such payments can be used as a mechanism for the corrupt or suspicious diversion of payment revenues to governmental officials for their personal use. *See, e.g.,* Ken Silverstein, The Secret World of Oil 79 (2014) (noting that "money specifically marked for social programs has been stolen" by the leaders of Equatorial Guinea and quoting a court filing by the U.S. Department of Justice that states: "The Inner Circle routinely demands that companies operating in E.G. contribute money to what are disguised as public service campaigns [to build housing and other social programs. However] the contributions are not used for their alleged purpose, but instead are largely taken by members of the Inner Circle . . . for their personal benefit.") (bracketed additions were included in The Secret World of Oil).

[208] *See* letter from Broadman & Searby (noting publications such as IPIECA, Creating Successful, Sustainable Social Investment: Guidance document for the oil and gas industry (2008); Alison Colwell

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Notably, this view was not limited to academia or civil society organizations. One industry commenter also stated that CSR payments are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals, at least when required by law or contract.[209] Furthermore, there is other evidence supporting the significant role that CSR payments have in the extractive industries. For example, several EITI implementing countries already disclose mandatory or voluntary social expenditures in their EITI Reports.[210] In addition, several issuers already report their required or voluntary CSR payments.[211] We recognize that significant disclosure regimes such as the EU Directives and ESTMA do not include CSR payments as a specified covered payment type. Nonetheless, we find that the evidence on balance supports the conclusion that such payments are now part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals.[212]

We do not believe it is appropriate to add the other payment types recommended by some commenters because we have not determined that they are material benefits that are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. With respect to commodity trading-related payments, we believe that our definition of "export" and the categories of payments in the final rules, particularly in-kind payments, accurately reflect the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals. We acknowledge that significant payments may be made by buying/trading companies and others to purchase the commodities covered by the final rules. Nevertheless, we do not believe that purchasing or trading oil, natural gas, or minerals, even at a level above the de minimis threshold, is on its own sufficiently related to the "commercial development" of those resources to be covered by the rules, particularly when the rules already require disclosure of in-kind payments of production entitlements. We have, however, addressed below how such production entitlements must be valued when initially made in-kind but subsequently purchased by the same issuer from the recipient government.

We are also not specifically requiring disclosure of payments for government expenses, providing jobs or tuition to persons related to government officials, investing in companies created by officials or related persons, or other similar payments that could reasonably raise corruption concerns. We find it unnecessary to do so because, when these payments are made to further the commercial development of oil, natural gas or minerals (in connection with or in lieu of the identified payments), they will already be covered by the anti-evasion provision we are adopting.[213]

With respect to payments for fines and penalties, we do not believe they relate sufficiently to the commercial development of natural resources to warrant inclusion. Although we acknowledge that the USEITI multi-stakeholder group has included penalties, we also note that the EITI Standard does not address the reporting of penalties or fines. In this regard, we understand that actual practice in countries applying the EITI Standard appears to vary depending on the particular interpretations of a country's multi-stakeholder group.[214] Furthermore, we note that neither the EU Directives nor ESTMA include fines or penalties as an explicit payment category.

We are adopting the proposed approach to in-kind payments with one modification. In the past, many commenters supported the inclusion of in-kind payments, particularly in connection with production entitlements and none of the commenters on the Proposing Release objected to their inclusion in the rules.[215] We also note that the EU Directives and ESTMA require disclosure of in-kind payments.[216] In addition to production entitlements, in-kind payments could include building a road or school, refurbishing a government building, or numerous other activities that do not involve providing monetary payments to the host country government. Although certain commenters recommended allowing issuers to choose between reporting in-kind payments at cost or fair market value, we continue to believe that such disclosure would be more consistent and comparable if issuers are required to report in-kind payments at cost, and are only permitted to report using fair market value if historical costs are not reasonably available or determinable. We are providing guidance, however, on how to report payments made to a foreign government or the Federal Government to purchase the resources associated with production entitlements that are reported in-kind.[217] If the issuer must report an in-kind production entitlement payment under the rules and then repurchases the resources associated with the production

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of BSR, Driving Business and Social Benefits Through Inclusive Community Investment (July 2015); Anglo American Corp., Socio-Economic Assessment Toolbox, Version 3 (2013); FSG, "Shared Value In Extractives," prepared materials for the Next-Gen CSR and Shared Value Forum (Feb. 2014); FSG, "Extracting with Purpose: Creating Shared Value in the Oil and Gas Band Mining Sectors' Companies and Communities" (Oct. 2014).

[209] *See* letter from ExxonMobil 1.

[210] *See* EITI Guidance, Note 17 (Apr. 24, 2014) (noting that Kazakhstan, Kyrgyzstan, Liberia, Mongolia, Mozambique, Peru, Republic of Congo, Togo, Yemen and Zambia require or reconcile social expenditures in their EITI reports).

[211] *See, e.g.,* Statoil ASA, *2015 Sustainability Report,* p. 29 (disclosing that in 2015 Statoil made NOK 37 million in social investments, of which NOK 5 million were contractual obligations); Newmont Mining Corporation, *Beyond the Mine-Our 2014 Social and Environmental Performance* (reporting that Newmont invested $28 million globally "to support a wide range of community investments"); Kosmos Energy Ltd., *2014 Corporate Responsibility Report* (reporting that Kosmos Energy spent $2,936,000 in social investments in 2014); BHP Billiton Ltd., 2015 Sustainability Report (reporting that BHP's voluntary community investment totaled $225 million USD in 2015); and Tullow Oil plc, *2015 Corporate Responsibility Report* (disclosing that Tullow spent $7,537,000 on discretionary social projects in 2015).

[212] One commenter questioned our conclusion in the Proposing Release that the European Union and Canada were consistent in generally not requiring disclosure of CSR payments, particularly with respect to Canada. *See* letter from Broadman & Searby. Although Canada does not list CSR payments as a separate payment type, the ESTMA Guidance states that "the onus is on the Reporting Entity to determine whether a voluntary or philanthropic payment does in fact relate in some way to its commercial development of oil, gas or minerals. This may include payments for corporate social responsibility purposes." In this regard, the guidance also states that entities "should look to the substance, rather than the form, of payments in determining which [payment] category is applicable." ESTMA Guidance, Section 3.5. The ESTMA Guidance further states that "payments made for corporate social responsibility purposes" may be required to be disclosed if "made to a payee in lieu of one of the payment categories that would need to be reported under [ESTMA]." *Id.* Finally, the ESTMA Guidance provides an example of how providing a local municipal government with a payment for a scholarship endowment and to build a community center should be reported under the bonus payment category. *Id.* at Box A.

[213] *See generally* U.S. Senate Permanent Subcommittee on Investigations, Committee on Government Affairs, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank Report, at 98–111 (July 14, 2004) (providing examples of the roles that resource extraction companies can play in facilitating the suspect or corrupt practices of foreign officials seeking to divert resource extraction payments that belong to the government).

[214] Based upon our review of EITI reports published in English on the EITI Web site, many of the reports do not report payments of fines and penalties.

[215] *See* 2012 Adopting Release, nn.170, 211 and accompanying text. In-kind payments include, for example, making a payment to a government in oil rather than a monetary payment.

[216] Article 41 of the EU Accounting Directive and Section 2 of ESTMA specifically include "in kind" payments in their definitions of "payment."

[217] *See* Instruction 11 to Item 2.01 of Form SD.

entitlement within the same fiscal year, the issuer must use the purchase price (rather than using the valuation methods described above) when reporting the in-kind value of the production entitlement. If the in-kind production entitlement payment and the subsequent purchase are made in different fiscal years and the purchase price is greater than the previously reported value of the in-kind payment, the issuer must report the difference in values in the latter fiscal year if that amount exceeds the de minimis threshold. In other situations, such as when the purchase price in a subsequent fiscal year is less than the in-kind value already reported, no disclosure relating to the purchase price is required. We believe that this approach more accurately captures the value of in-kind payments for production entitlements than the proposed approach and addresses commenters concerns without adding significantly to the burden of resource extraction issuers.

We have also considered whether to require issuers to report the volume of in-kind payments. As discussed above, commenters were divided on this suggestion.[218] We generally agree with the commenter that stated such information was unnecessary.[219] Based on these considerations, we are not requiring disclosure related to volume. We note that issuers are required to provide a brief description of how the monetary value was calculated, which will provide some additional context for assessing the reasonableness of the disclosure.

We are adopting as proposed an instruction setting forth a non-exclusive list of fees (rental fees, entry fees, and concession fees) and bonuses (signature, discovery, and production bonuses). As discussed in the Proposing Release, the EITI specifically mentions these types of fees and bonuses as payments that should be disclosed by EITI participants.[220] This supports our view that these types of fees and bonuses are part of the commonly recognized revenue stream. As recommended by certain commenters, we are also adding a non-exclusive list of royalties since we believe that would provide additional clarity for issuers.[221] Thus, the term "royalties" would include, but not be limited to, unit-based, value-based, and profit-based royalties.[222] Of course, resource extraction issuers may be required to disclose other types of fees, bonuses, and royalties depending on the particular facts and circumstances.

In response to commenters' concerns about compliance costs, we noted in the Proposing Release that issuers would not be required to have the payment information audited or reported on an accrual basis.[223] As noted above, one commenter questioned whether this was a shift from the position taken in prior staff guidance, which indicates that issuers are not permitted to provide the payment information on an accrual basis.[224] We have revised Form SD to expressly state that the payment information need not be audited and must be made on a cash basis. As we discussed in the 2012 Adopting Release, we believe that this is the best approach because (1) these payment disclosures are largely cash-based, so reporting them on a cash basis will not result in a significant compliance burden, and (2) requiring a consistent approach will improve comparability and therefore result in greater transparency.

We are adopting the proposed definition of "not de minimis" for the reasons stated in the Proposing Release. A "not de minimis" payment is one that equals or exceeds $100,000, or its equivalent in the issuer's reporting currency,[225] whether made as a single payment or series of related payments. We continue to believe that this definition provides a clear standard for determining which payments a resource extraction issuer must disclose. Furthermore, several countries have established payment thresholds that approximate the proposed $100,000 standard.[226] We believe that the establishment of a similar payment threshold by these countries diminishes any potential additional compliance burden and potential competitive harm that otherwise could be caused by disclosure rules that include a payment threshold that varies significantly from the standard used in other jurisdictions. As discussed above, only one of the many commenters that addressed the definition thought that the reporting threshold was too low.[227] Although we acknowledge this commenter's concerns that the threshold might be considered low for companies working on "massive" scale projects, we note that none of the large issuers commenting on the Proposing Release expressed similar concerns. For this reason and the reasons stated above, we are not increasing the threshold.

Finally, despite the changes recommended by commenters, we are adopting the anti-evasion provision as proposed. Thus, the final rules require disclosure with respect to an activity (or payment) that, although not within the categories included in the proposed rules, is part of a plan or scheme to evade the disclosure required under Section 13(q).[228] This provision is designed and intended to emphasize substance over form or characterization and to capture any and all payments made for the purpose of evasion. Accordingly, we believe that it covers most of the situations that appeared to concern commenters. For example, the provision would cover payments that were substituted for otherwise reportable payments in an attempt to evade the disclosure rules,[229] as well as activities and payments that were structured, split, or aggregated in an attempt to avoid application of the rules.[230] Similarly, as noted in the Proposing Release, a resource extraction issuer could not avoid disclosure by re-characterizing an activity as transportation that would otherwise be covered under the rules, or by making a payment to the government via a third party in order to avoid disclosure under the proposed rules.

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[218] *See* Section II.C.2 above.

[219] *See* letter from ExxonMobil 2.

[220] *See* EITI Standard, at 23.

[221] *See* Instruction 9 to Item 2.01 of Form SD. *See also* letter from PWYP–US 1.

[222] These types of royalties were recommended by PWYP–US based on the following publication: World Bank, *Mining Royalties: Their Impact on Investors, Government and Civil Society* (2006), pp. 50–54, *available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/09/11/000090341_20060911105823/Rendered/PDF/372580Mining0r101OFFICIAL0USE0ONLY1.pdf.*

[223] *See* Section II.G.5 of the Proposing Release.

[224] Resource Extraction FAQ 7, *available at https://www.sec.gov/divisions/corpfin/guidance/faq.htm.*

[225] Instruction 2 to Item 2.01 allows an issuer to choose several methods to calculate currency conversions for payments not made in U.S. dollars or the issuer's reporting currency. We have clarified in that instruction that the same methods are available to issuers when calculating whether a payment not made in U.S. dollars exceeds the de minimis threshold. However, an issuer must use a consistent method for such de minimis payment currency conversions and must disclose which method it used.

[226] *See* EU Accounting Directive, Art. 43(1) and Recital 46 (using €100,000, or approximately $112,280 (USD) as of June 16, 2016); UK Reports on Payments to Governments Regulations 2014 (2014 Statutory Instrument No. 3209), Part 1, 5.–(3) (using £86,000, or approximately $122,180 (USD) as of June 16, 2016); Norwegian Regulations, Section 3 (using 800,000 kr, or approximately $95,302 (USD) as of June 16, 2016); and ESTMA, Section 9(2) (using $100,000 (CAD), or approximately $77,140 (USD) as of June 16, 2016).

[227] *See* letter from Nouveau. Comments received prior to the Proposing Release were divided on whether the threshold should be increased or decreased. *See* Section II.C.2 of the Proposing Release for a discussion of those comments.

[228] *See* Rule 13q–1(b).

[229] *See* letter from Bean.

[230] *See, e.g.,* letter from PWYP–US 1.

D. Definition of "Subsidiary" and "Control"

1. Proposed Rules

In addition to requiring an issuer to disclose its own payments, Section 13(q) also requires a resource extraction issuer to disclose payments by a subsidiary or an entity under the control of the issuer made to a foreign government or the Federal Government relating to the commercial development of oil, natural gas, or minerals. The proposed rules defined the terms "subsidiary" and "control" using accounting principles rather than other alternatives, such as using the definitions of those terms provided in Rule 12b–2.[231]

Within the context of the proposed rules, a resource extraction issuer would have "control" of another entity if the issuer consolidated that entity or proportionately consolidated an interest in an entity or operation under the accounting principles applicable to the financial statements it includes in periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. Thus, for determining the eligible payments, or portions thereof, that must be disclosed, the resource extraction issuer would follow the consolidation requirements under generally accepted accounting principles in the United States ("U.S. GAAP") or under the International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS"), as applicable.[232] The extent to which the entity making the eligibility payment is consolidated would determine the extent to which payments made by that entity must be disclosed. For example, a resource extraction issuer that proportionately consolidates an interest in an entity or an operation would be required to disclose the issuer's proportionate amount of that entity's or operation's eligible payments indicating the issuer's proportionate interest.

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on how the term "control" should be defined. For example, we asked whether it was preferable to base the definition of "control" on applicable accounting principles, rather than using Rule 12b–2 of the Exchange Act, and whether there would be significant differences between these approaches. We also asked whether we should allow resource extraction issuers to report eligible payments made by proportionately consolidated entities on a proportionate basis. Finally, we solicited comment on whether there were any aspects of other international transparency initiatives or differences between U.S. GAAP and IFRS that we should address so as to promote the comparability of this type of disclosure.

All of the commenters addressing this aspect of the proposal generally supported using accounting consolidation principles instead of Rule 12b–2.[233] Several of these commenters, however, stated that using accounting principles would be acceptable only if the concept of "significant influence" was used in conjunction with proportional consolidation.[234] These commenters expressed concern that proportional consolidation is optional for oil and gas companies under U.S. GAAP and is rarely used. They were also concerned that companies might structure joint ventures to avoid disclosure. Other commenters disagreed with adding a "significant influence" concept to the definition of control.[235] For example, one expressed concerns about the ability to access payment-level financial information from an entity over which it only had "significant influence."[236] Another commenter stated that there was no support for the assertion that joint ventures would be structured to avoid disclosure and that any reporting gap is inherent to Section 13(q), which applies only to companies subject to the Commission's jurisdiction.[237]

Several of the commenters that otherwise supported the proposed approach had concerns about using proportional consolidation to determine control.[238] These commenters were generally concerned that issuers who use proportional consolidation might not have access to the required payment information from operators of existing joint ventures. These commenters stated that issuers have access only to high-level data regarding revenues and costs of the proportionally consolidated entities or operations. One of these commenters was concerned that the resulting disclosure could be confusing or misleading because there will be situations where an issuer has multiple operations with different ownership interests that would be both operationally and geographically interconnected and therefore would be classified as a single project for reporting purposes.[239] Another recommended addressing this issue by clarifying that Rule 12b–21 would permit an issuer to exclude information with respect to entities where the issuer does not have access to the information required to be disclosed.[240]

Several of the commenters who had concerns with proportional consolidation for determining "control" recommended that when the payments relate to joint ventures the rules should only require disclosure of payments by the operator of the joint venture.[241] Under this recommendation, the operator would report all of the eligible payments it makes, rather than its proportional share. A number of these commenters indicated that this approach would be more consistent with the requirements under the EITI, EU Directives, and ESTMA.[242] One of these commenters recommended specific changes to the rules and instructions that it stated would accomplish this purpose and would clarify that "control" extends down an organizational chain to entities controlled by other controlled entities.[243] Other commenters acknowledged that this recommended change to the Commission's proposed definition of "control" could result in payments not being reported when the operator of a joint venture is not subject to the rules, even if minority partners in the joint venture are subject to the rules.[244] These commenters stated, however, that a similar gap in coverage would exist under the proposed definition when a company subject to the rule is the operator in a joint venture but the joint venture partners are not subject to the reporting requirement. In that situation, these commenters stated that the operator would be required to report only its own proportional share of the payment made to the host government.

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[231] Under Exchange Act Rule 12b–2 [17 CFR 240.12b–2], "control" (including the terms "controlling," "controlled by" and "under common control with") is defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Rule 12b–2 also defines a "subsidiary" of a specified person as "an affiliate controlled by such person directly, or indirectly through one or more intermediaries." *See also* the definitions of "majority-owned subsidiary," "significant subsidiary," and "totally-held subsidiary" in Rule 12b–2.

[232] *See* Accounting Standards Codification ("ASC") 810, *Consolidation,* IFRS 10, *Consolidated Financial Statements* and IFRS 11, *Joint Arrangements* for guidance. A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP or IFRS, and files with the Commission a reconciliation to U.S. GAAP would be required to determine whether or not an entity is under its control using U.S. GAAP.

[233] *See* letters from API 1; BP; Chevron Corporation (Feb. 16, 2016) ("Chevron"); Encana; ExxonMobil 1; Petrobras; PWYP–US 1; and Royal Dutch Shell plc (Feb. 5, 2016) ("RDS"). *See also* letters from ACEP; Global Witness; and Oxfam 1.

[234] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[235] *See* letters from API 2 and ExxonMobil 2.

[236] *See* letter from ExxonMobil 2.

[237] *See* letter from API 2.

[238] *See* letters from API 1; BP; Chevron; Encana; ExxonMobil 1; Petrobras; and RDS.

[239] *See* letter from ExxonMobil 1.

[240] *See* letter from RDS.

[241] *See* letters from API 1; BP; Chevron; Encana; ExxonMobil 1; and Petrobras.

[242] *See* letters from API 1; BP; Chevron; Encana; and ExxonMobil 1.

[243] *See* letter from Encana.

[244] *See, e.g.,* letter from API 2.

3. Final Rules

We are adopting the proposed definitions of "subsidiary" and "control." We continue to believe that using accounting principles to determine control, rather than Rule 12b–2, is appropriate in light of the significant international developments since the 2012 Rules were vacated. Specifically, this approach, although not identical, complements two major international transparency regimes, the EU Directives and ESTMA, and should therefore support international transparency promotion efforts by fostering consistency and comparability of disclosed payments.[245] Also, as noted above, all of the commenters that addressed this aspect of the proposed rules generally supported using accounting principles to define "control."

We believe that the definition we are adopting today better balances transparency for users of the payment disclosure and the burden on issuers than the use of the Rule 12b–2 definition of "control" or alternatives recommended by commenters. Issuers already apply the concept of control for financial reporting purposes, which should facilitate compliance. Assuming a reporting issuer consolidates the entity making the eligible payment,[246] this approach also should have the benefit of limiting the potential overlap of the disclosed payments because generally, under applicable financial reporting principles, only one party can control, and therefore consolidate, that entity. Further, this approach may enhance the quality of the reported data since each resource extraction issuer is required to provide audited financial statement disclosure of its significant consolidation accounting policies in the notes to the audited financial statements included in its existing Exchange Act annual reports.[247] The disclosure of these accounting policies should provide greater transparency about how the issuer determined which entities and payments should be included within the scope of the required disclosures. Finally, a resource extraction issuer's determination of control under the final rules is subject to the audit process as well as to the internal accounting controls that issuers are required to have in place with respect to reporting audited financial statements filed with the Commission.[248]

We considered the recommendation of some commenters to include a "significant influence" test for determining control in addition to the accounting consolidation principles we proposed. We do not believe, however, that we should define control such that significant influence by itself would constitute control.[249] The concept of significant influence does not reflect the same level of ability to direct or control the actions of an entity that is generally reflected in the concept of consolidation. As such, we believe that the consolidation principles are better aligned with the purposes underlying Section 13(q) than a significant influence test. Moreover, unlike a potential significant influence test, the consolidation principles used to define control for the purposes of Section 13(q) more closely capture the situations where the resource extraction issuer has access to the information that is required to be reported.[250] We also note that the European and Canadian reporting regimes do not measure control based on "significant influence" alone. For these reasons, we have chosen not to include a significant influence test in the final rules.

The final rules also require disclosure of the proportionate amount of the eligible payments made by a resource extraction issuer's proportionately consolidated entities or operations. We believe this approach is consistent with using accounting principles to determine control because, when proportionate consolidation is applied, an entity has an undivided interest in or contractual rights and obligations in specified assets, liabilities and operations. Under this approach, the proportionate amount of eligible payments reported by the issuer reflects the underlying interest in the economics associated with the specified assets, liabilities, and operations. Although we acknowledge commenters' concerns about the ability of an issuer to obtain sufficiently detailed payment information from proportionately consolidated entities or operations when it is not the operator of that venture, we note that the delayed compliance date in the final rules will provide issuers two years to make arrangements with joint venture operators to obtain the required payment information. If, after reasonable effort, the issuer is unable to obtain such information, it would be able to rely on Exchange Act Rule 12b–21 to omit the information if the information is unknown and not reasonably available.[251] We expect, however, that for future joint ventures, non-operator issuers can and should negotiate for access to the appropriate information.

E. Definition of "Project"

1. Proposed Rules

We proposed requiring a resource extraction issuer to disclose payments made to governments relating to the commercial development of oil, natural gas, or minerals by type and total amount per project.[252] The proposed definition of "project" was modeled on the definition found in the EU Directives and the ESTMA Specifications, albeit modified to provide resource extraction issuers with additional flexibility on how to treat operations involving multiple, related contracts.

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[245] *See, e.g.*, EU Accounting Directive, Art. 44 (providing for the preparation of consolidated reports, subject to limited exceptions). ESTMA provides that "control" includes both direct and indirect control, but Section 2.1.3 of the ESTMA Guidance states that "[w]here one business controls another enterprise under the accounting standards applicable to it . . . that will generally be sufficient evidence of control for purposes of the Act."

[246] See below for a discussion of a resource extraction issuer's disclosure obligations concerning proportionately consolidated entities or operations.

[247] *See* ASC 235–10–50; IFRS 8. *See also* Rules 1–01, 3–01, and 4–01 of Regulation S–X [17 CFR 210.1–01, 2–01 and 4–01].

[248] *See* Exchange Act Section 13(b)(2)(B) [15 U.S.C. 78m(b)(2)(B)]. *See also* Rules 13a–15 [17 CFR 240.13a–15] and 15d 15 [17 CFR 240.15d–15]. We note, however, that the proposed rules would not create a new auditing requirement.

[249] In this regard, we note that under U.S. GAAP and IFRS, significant influence alone does not represent a level of control that would result in consolidation. *See* ASC 323–10–15, paragraphs 6 through 11 and IAS 28, paragraph 3.

[250] Compared to an issuer that consolidates an entity, an issuer applying proportionate consolidation may not have the same level of ability to direct the entity or operations making the eligible payments. However, an issuer applying proportionate consolidation has a direct or undivided ownership in the assets and liabilities of the entity or operations, and the issuer's ability to apply proportionate consolidation indicates a higher likelihood that it is able to obtain the information necessary to satisfy the reporting requirements.

[251] 17 CFR 240.12b–21. Specifically Rule 12b–21 states that information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted. The rule goes on to provide two additional conditions. The first is that the registrant must give such information on the subject that it possesses or can acquire without unreasonable effort or expense, together with the sources of that information. The second is that the registrant must include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

Similar to the EU Directives and the ESTMA Specifications, we proposed to define "project" as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government.[253] The proposed definition was also similar to the EU Directives and the ESTMA Specifications in allowing issuers to treat multiple agreements that are both operationally and geographically interconnected as a single project.[254] Unlike the EU Directives and Canadian definitions, however, our proposed definition of "project" provided additional flexibility to issuers by excluding a requirement that the agreements have "substantially similar terms."

In order to assist resource extraction issuers in determining whether two or more agreements may be treated as a single project, we proposed an instruction that provided a non-exclusive list of factors to consider when determining whether agreements are "operationally and geographically interconnected" for purposes of the definition of project. No single factor was necessarily determinative. Those factors included: Whether the agreements related to the same resource and the same or contiguous part of a field, mineral district, or other geographic area; whether they were performed by shared key personnel or with shared equipment; and whether they were part of the same operating budget.[255] Furthermore, we proposed an instruction stating that issuers were not required to disaggregate payments that are made for obligations levied on the issuer at the entity level rather than the project level.[256]

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on many possible approaches to defining the term "project," as well as the broader question of whether we should define "project" at all. We sought public comment on how best to craft a definition that advanced the U.S. governmental interest in combatting global corruption and promoting public accountability with respect to extractive resources. Specifically, we asked about alternative definitions found in other jurisdictions, such as the European Union and Canada, as well as the API's proposed definition. We asked commenters to consider how alternative definitions might enhance transparency and the comparability of data. For example, we asked whether we should align our definition more closely with the EU Directives and ESTMA and whether there was an alternative to a contract-based definition of "project" that would be preferable. We also asked commenters about specific aspects of the proposed rules, such as under what circumstances should the rules allow for multiple agreements to be aggregated as a single project.

Numerous commenters supported the statute's directive to require disclosure at the project level.[257] Many other commenters supported defining "project" in relation to a legal agreement, such as a contract, lease, license, or concession, consistent with the definition in the European Union and Canada.[258] A number of other commenters specifically supported the proposed definition.[259] One of these commenters stated that project-level disclosure by contract was necessary to evaluate and implement effective oil and mineral revenue sharing policies in Ghana.[260] USAID stated that the EITI standard also encourages public disclosure of the details of contracts and licenses that provide the terms for the exploitation of oil, gas, and minerals.[261]

Of the commenters supporting the proposed definition of "project," one supported the proposed non-exclusive list of factors to consider when determining whether agreements are "operationally and geographically interconnected."[262] This commenter stated that these factors would help ensure that issuers are in compliance with the proposed rules. Other commenters that were supportive of the "project" definition, however, recommended eliminating the list of non-exclusive factors and providing clear instructions on when agreements could be aggregated.[263] Also, several commenters recommended only allowing for agreements to be aggregated if they have substantially similar terms[264] and are operationally and geographically "integrated" rather than "interconnected."[265] These commenters expressed concern that the proposed rules might allow issuers to "artificially aggregate payments and obfuscate payment information."[266] These commenters also questioned whether the "cost to issuers of [requiring] 'substantially similar terms' outweighs the gains of equivalency" with other transparency regimes.[267] On the other hand, the Department of Interior noted that the proposed level of aggregation correlated to on-the-ground operations on U.S. federal lands.[268]

Several other commenters opposed the proposed definition of "project."[269] For example, one of these commenters criticized the definition as too vague and was concerned that disclosing payments to foreign and subnational governments on a per contract or project basis would severely disadvantage competition against state-affiliated firms that are not subject to similar rules.[270] Another of these commenters questioned "the utility of adopting an overly expansive EU definition" of "project" when it results in companies using "different definitions to describe largely similar activities" and provides "great volumes of data" with "no framework in place that allows everyday citizens to have even a fighting chance of understanding what's actually being reported."[271] Most of the commenters that opposed the Commission's proposed definition of project supported the API's alternative definition (the "API Proposal"). These commenters stated that the API Proposal would have lower compliance costs, generate more useful data due to the use of consistent geographic descriptions and project descriptions across the data set, and would cause less competitive harm due to the higher level of aggregation, while still achieving the purposes of the statute. In this regard, two supporters of the API definition suggested that the use of International Organization for Standardization ("ISO") codes would provide consistent subnational geographic descriptions when using the API's project naming system.[272] One industry commenter supporting the API Proposal also expressed support for the proposed rules if certain changes were made to the alternative reporting provisions and the definition of "control." [273]

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[252] *See* Section II.E of the Proposing Release.

[253] *See* proposed Item 2.01(c)(10) of Form SD.

[254] *Id.*

[255] *See* proposed Instruction 12 to Item 2.01 of Form SD.

[256] *See* proposed Instruction 4 to Item 2.01 of Form SD.

[257] *See* letters from Peck & Chayes; Quinones; Sen. Cardin et al.; Sen. Lugar et al.; and Form Letter A.

[258] *See* Form Letter B.

[259] *See* letters from ACEP; ACTIAM NV, AP1/Första AP-Fonden (First Swedish National Pension Fund), Andra AP2-Fonden (Second Swedish National Pension Fund), AP3/Tredje AP-Fonden (Third Swedish National Pension Fund), AP4/Fjärde AP-Fonden (Fourth Swedish National Pension Fund), Aviva Investors, Bâtirente, BMO Global Asset Management, BNP Paribas Investment Partners, British Columbia Investment Management Corporation, California State Teachers' Retirement System (CalSTRS), Calvert Investments, Cartica Capital, Ethos Foundation, Switzerland, Henderson Global Investors, Hermes Equity Ownership Services Ltd., Legal & General Investment Management, NEI Investments, RPMI Railpen Investments, and Sandglass Capital Management (Mar. 8, 2016) ("ACTIAM et al."); Bean; BHP; Calvert; Department of Interior; State Department; Encana; Global Witness 1; McCarthy; NRGI 1; Oxfam 1; PWYP–US 1; TI–USA; USAID; and USSIF.

[260] *See* letter from ACEP.

[261] *See* letter from USAID.

[262] *See* letter from BHP.

[263] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[264] *See* letters from PWYP–US 1 and USAID. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[265] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[266] *See id.*

[267] *See id.*

[268] *See* letter from Department of Interior.

[269] *See* letters from API 1; ASP; BP; Chevron; ExxonMobil 1; Nouveau; and RDS.

[270] *See* letter from Encana.

[271] *See* letter from ASP.

Several of the commenters that supported the proposed definition also specifically criticized the API Proposal for not providing a sufficiently granular level of information to meet the statute's transparency goals and for being inconsistent with international transparency promotion efforts.[274] One of these commenters specifically argued that the use of ISO codes to identify subnational geographic location would be too broad geographically, and disputed the contention that the data generated under the EU Directives would be difficult to evaluate.[275]

3. Final Rules

After considering commenters' recommendations and international developments [276] since the Proposing Release, we are adopting the definition of "project" as proposed. The final rules define "project" as operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government.[277]

Commenters continue to express strong disagreement over the level of granularity that should be adopted for the definition of "project." After carefully considering the comments received, we remain persuaded that the definition of project that we proposed is necessary and appropriate to achieve a level of transparency that will help advance the important anti-corruption and accountability objectives underlying Section 13(q).[278] In the Proposing Release, we explained specific considerations that supported this contract-based definition of project:

- Such disaggregated information may help local communities and various levels of subnational government combat corruption by enabling them to verify that they are receiving the resource extraction revenue allocations from their national governments that they may be entitled to under law. In this way, project-level disclosure could help reduce instances where government officials are depriving subnational governments and local communities of revenue allocations to which they are entitled.
- Project-level reporting at the contract level could potentially allow for comparisons of revenue flow among different projects, and the potential to engage in cross-project revenue comparisons may allow citizens, civil society groups, and others to identify payment discrepancies that reflect potential corruption and other inappropriate financial discounts.
- To the extent that a company's contractual or legal obligations to make resource extraction payments to a foreign government are known, company-specific, project-level disclosure may help assist citizens, civil society groups, and others to monitor individual companies' contributions to the public finances and ensure firms are meeting their payment obligations.[279] Such data may also help various actors ensure that the government is properly collecting and accounting for payments.
- Company-specific, project-level data may also act as a strong deterrent to companies underpaying royalties or other monies owed.[280] Such data may also discourage companies from either entering into agreements that contain suspect payment provisions or following government officials' suspect payment instructions.[281]
- Such disaggregated reporting may help local communities and civil society groups to weigh the costs and benefits of an individual project. Where the net benefits of a project are small or non-existent, this may be an indication that the foreign government's decision to authorize the project is based on corruption or other inappropriate motivations.[282]

In advancing these potential uses for the granular transparency that our definition of project would yield, we relied on concrete examples that commenters from countries across the globe provided to us.[283] Moreover, two Executive Branch agencies with significant expertise in promoting the U.S. Government's anti-corruption and accountability foreign policy goals strongly supported our proposed approach. Specifically, the U.S. Department of State stated that the "level of transparency required by the proposed rule is key for ensuring that citizens have the necessary means to hold their governments accountable. As written, the rule's requirements directly advance the United States' foreign policy interests in increasing transparency and reducing corruption in the oil, gas, and minerals sectors and strengthen the United States' credibility and ability to fight corruption more broadly[.]"[284] Similarly, USAID supported the proposed approach to defining project and explained that "[o]nly through more granular, project-level reporting will disclosure produce meaningful data for citizens, civil society, and local groups that seek to break cycles of corruption that involve government and corporations."[285]

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[272] *See* letters from ASP and ExxonMobil 1. ISO is an independent, non-governmental international organization with a membership composed of various national standards bodies. *See About ISO, available at http://www.iso.org/iso/home/about.htm* (last visited June 16, 2016).

[273] *See* letter from RDS (requesting that the Commission recognize UK implementation of the EU Directive as an approved alternative reporting scheme and clarify that Rule 12b–21 would permit a company to exclude information with regard to proportionally consolidated non-operated entities where it does not have access to the required information needed to be disclosed. *See* Section II.J.3, *infra*, and Section II.D.3, *supra*, for discussion of these requests.

[274] *See, e.g.*, ACEP and PWYP–US 1.

[275] *See* letter from McCarthy.

[276] *See* Section I.C. above.

[277] We expressly incorporate the Proposing Release's discussion of the rationales for the definition of project. *See* Proposing Release, Section II.E.

[278] One commenter asserted that foreign governments might use the Section 13(q) disclosure requirement as "a pretext for expropriating" the assets of a resource extraction issuer. See letter from API 1. We note that an issuer facing such a situation could seek exemptive relief from the Commission to potentially delay or avoid its Section 13(q) reporting obligation and, thus, to potentially forestall the expropriation. *See* Section II.I below for our discussion of exemptive relief. We also note that the commenter stated that the required disclosures would be a "pretext" for expropriation. If a country is intent on expropriating a resource extraction issuer's assets, it is not clear that there is any action the Commission could take, either in this rulemaking or later through exemptive relief, that could dissuade the action.

[279] In this regard, we note that one industry commenter has observed that, at least for contracts for projects that are older or well-established, "the general terms are likely to be known even if technically not public." *See* letter from API 1.

[280] More broadly, we believe that, in contrast to the API Proposal of aggregated disclosure at the major subnational jurisdiction level, contract-level disclosure will better help deter corruption by all participants in the resource extraction sector. As we explained in the Proposing Release, detailed or granular disclosure makes hidden or opaque behavior more difficult. *See* Proposing Release, Section I.E.1. Specifically, the granular information makes it easier for the public and others to observe potential improprieties with respect to the payment flows and such disclosure makes it more difficult for actors to hide any impropriety from scrutiny. *See generally* 156 Cong. Rec. S3815 (explaining that Section 13(q) is intended to create "a historic transparency standard that will pierce the veil of secrecy that fosters so much corruption and instability in resource-rich countries . . . ."). This, in turn, has an enhanced deterrent effect that may discourage improper conduct in the first instance.

[281] For examples of the role that resource extraction companies can play in facilitating the suspect or corrupt practices of foreign officials seeking to divert for their own personal use resource extraction payments that belong to the government, see U.S. Senate Permanent Subcommittee on Investigations, Committee on Government Affairs, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank Report, at 98–111 (July 14, 2004). Among other examples, this report discusses instances where, both at the direction of government officials of Equatorial Guinea ("E.G.") and pursuant to suspect terms of the underlying contracts with the government, resource extraction companies diverted payments that should have been paid to the government to other accounts and to persons connected with E.G. government officials. *Id.* at 98 (finding that "Oil companies operating in Equatorial Guinea may have contributed to corrupt practices in that country by making substantial payments to, or entering into formal business ventures with, individual E.G. officials, their family members, or entities they control, with minimal public disclosure of their actions"); *see also id.* at 99 & 104 (explaining that the E.G. government instructs oil companies where to send payments owed to the government and has directed oil companies to divert payments for potentially corrupt purposes such as paying the educational costs of the children and other relatives of E.G. government officials). By requiring the public disclosure of the identity of the resource extraction issuers who are making payments, we believe this may help to deter their willingness to participate in any such diversions of government revenues or to enter into any contracts that have suspect payment terms.

[282] *See* Proposing Release, Section I.E.2.

We acknowledge that some commenters, in particular the API and certain industry-affiliated commenters, challenged the appropriateness of the contract-based definition of project that we are adopting.[286] In particular, one of the principal criticisms of this definition was that "contract-specific disclosure actually frustrates Section 13(q)'s transparency objective."[287] In advancing this view, the API contends that "Section 13(q)'s goal of transparency is best served by a definition of project that aggregates payments to a more useful—*i.e.*, higher—level of generality, instead of burying the public in an avalanche of data that is irrelevant to the law's avowed purpose."[288] After carefully considering the record (including filings that some companies have already prepared in accordance with a definition of project similar to our own), we do not share the API's view that the disclosures we are requiring would be counterproductive. Many of the commenters who have demonstrated a detailed understanding of the various possible disclosure regimes, particularly those civil society organizations and related actors that have experience using revenue data and that have expressed the greatest interest in the data that would be released under the final rules, disagree and have explained through specific examples how the granular data would be important to help reduce corruption and promote accountability.[289] We are persuaded by both the arguments they have advanced and the evidence they have produced that a more granular approach to the definition of "project" like the one we are adopting today is necessary.[290]

We also believe that, in advancing its view, the API appears to have an unduly narrow understanding of Section 13(q)'s purpose. The API stated that Section 13(q) is limited "to provid[ing] the public with information about the overall revenue that national governments receive from natural resources, so that the public can seek to hold the government accountable for how much it is receiving and how it spends that money."[291] We believe that Section 13(q)'s anti-corruption and accountability goals are broader and include, among other things, providing transparency to members of local communities so that they can hold their government officials and others accountable for the underlying resource extraction agreements to help ensure that those agreements themselves are not corrupt, suspect, or otherwise inappropriate. To cabin Section 13(q)'s goals as the API would do, in our view, would severely limit the potential transparency and anti-corruption benefits that the disclosures might provide to citizens of resource-rich countries.[292]

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[283] *See* letter from ACEP (public disclosure of payments made by company and by project are critical in order to ensure that statutory allocation of mining royalties to Ghanaian subnational governments was received.). *See also* Proposing Release at n.94 and accompanying text (providing several additional examples).

[284] *See* letter from State Department.

[285] *See* letter from USAID.

[286] The API asserts that the requirement that resource extraction issuers "disclose payments at the contract-level is unmoored from the statute." Letter from API 1. The API, however, fails to explain why a contract-level focus is an unreasonable frame of reference for the term "project." In commercial relations, contracts are frequently used to define the scope of a project that one party is undertaking for another. Also, as discussed above, the EU Directives and the ESTMA Specifications define project at the contract-level, further confirming that our definition is (at a minimum) reasonable. Furthermore, nothing in the text or legislative history of Section 13(q) forecloses a contract-level definition. For these reasons, and for the reasons that we expressed in Section II.E. of the Proposing Release, we continue to believe that a contract-based definition of "project" is reasonable and appropriate.

[287] *See* letter from API 1.

[288] *See id.* ("In addition, overly granular information could very likely make it *more* difficult for the public to make use of the disclosures.") (emphasis in original).

[289] *See* letters from PWYP–US 1 and Oxfam-ERI.

[290] *See* letter from Oxfam-ERI and letters cited therein. The API asserts that contract-level reporting would "give insurgents or terrorists valuable information about where the government is most financially vulnerable" and "[i]nsurgents can use that information to plan attack[s]." Letter from API 1. We acknowledge that such groups can pose a threat. *See, e.g., Saboteurs Hit Nigerian Oil,* The Wall Street Journal, at A1 (June 6, 2016). However, we note that it appears that substantial information is already reasonably available to the public about the major resource extraction projects and facilities operating in countries around the world. For example, an internet search reveals the following non-exhaustive list of items: William Pentland, *World's Five Largest Offshore Oil Fields, Forbes* (Sept. 7, 2013), *available at http://www.forbes.com/sites/williampentland/2013/09/07/worlds-five-largest-offshore-oil-fields/#674f017b4bea*); James Burgess, *Six of the Largest Oil Fields in the World Still Waiting To Be Developed,* OilPrice.com (April 1, 2012), *available at http://oilprice.com/Latest-Energy-News/World-News/6-of-the-Largest-Oil-Fields-in-the-World-Still-Waiting-to-be-Developed.html*; Nick Cunningham, *Here Are the World's Five Most Important Oil Fields,* OilPrice.com (June 5, 2014), *available at http://oilprice.com/Energy/Energy-General/Here-Are-The-Worlds-Five-Most-Important-Oil-Fields.html*; Fredrik Robelius, *Giant Oil Fields of the World* (presentation on May 23, 2005) (listing 25 of the world's giant oil fields), *available at http://www.peakoil.net/AIMseminar/UU_AIM_Robelius.pdf*; Christopher Helman, *In Depth: The Top 10 Oil Fields of the Future,* Forbes (Jan. 1, 2010), *available at http://www.forbes.com/2010/01/20/biggest-oil-fields-business-energy-oil-fields_slide.html*; U.S. Energy Information Administration, *Top 100 U.S. Oil and Gas Fields* (March 2015), *available at http://www.eia.gov/naturalgas/crudeoilreserves/top100/pdf/top100.pdf. See also* Perry-Castañeda Library Map Collection, *available at http://www.lib.utexas.edu/maps/map_sites/oil_and_gas_sites.html* (last visited June 16, 2016) (providing web links to maps detailing location of oil fields in Asia, Europe, the Middle East, Africa, North America, and South America); Collection of the U.S. Geological Survey's World Petroleum Assessment Publications, *available at http://energy.usgs.gov/OilGas/AssessmentsData/WorldPetroleumAssessment.aspx* (last visited June 16, 2016); International Petroleum Encyclopedia for 2015 (includes certain oil field production statistics); Natural Gas Information 2015 (providing information on natural gas extraction pipeline trade); U.K. Oil and Gas: Field Data, *available at https://www.gov.uk/guidance/oil-and-gas-uk-field-data#oil-and-gas-wells* (last visited June 16, 2016) (data for oil and gas wells in the United Kingdom). The API's comment letter does not acknowledge the information that is already reasonably available nor does it explain why the payment data that would be made available under the Commission's rules would create an appreciably greater risk to safety than already may exist. In any event, as we discuss in Section II.I.3 below, the Commission will consider requests exemptive relief based on potential safety and terrorism concerns on a case-by-case basis, and resource extraction issues will have an opportunity in making such a request to demonstrate why an exemption is warranted with respect to a specific project, region, or country.

[291] *See* letter from API 1. The text of Section 13(q) itself suggests that the API's understanding of the statute's purpose is unduly narrow. Section 13(q) requires two broad categories of disclosure: "the type and total amount of [resource extraction] payments made to each government" (government-level disclosure), *see* Exchange Act Section 13(q)(2)(ii), and "the type and total amount of such payments made for each project" (project-level disclosure), *see* Exchange Act Section 13(q)(2)(i). Were the API correct that Section 13(q) is limited "to provid[ing] the public with information about the overall revenue that national governments receive from natural resources, so that the public can seek to hold the government accountable for how much it is receiving and how it spends that money," Congress could have achieved this objective by simply mandating the government-level disclosure. That Congress did not stop there but instead also mandated project-level disclosure suggests to us that the anticorruption and accountability objectives underlying Section 13(q) are broader than the API asserts.

For the reasons discussed above, and for the reasons set forth in the Proposing Release, we believe that the definition of project that we are adopting will provide the type of granular transparency that is necessary to advance in a meaningful way the statute's anti-corruption and accountability objectives.[293] In arriving at our determination, we carefully considered the API Proposal.[294] Under that proposal, all of an issuer's resource extraction activities within the first-level of subnational political jurisdiction of a country below the national government would be treated as a single "project" to the extent that these activities involve the same resource (*e.g.*, oil, natural gas, coal) and to the extent that they are extracted in a generally similar fashion (*e.g.*, onshore or offshore extraction, or surface or underground mining). To illustrate how its proposed definition would work, the API explained that all of an issuer's extraction activities producing natural gas in Aceh, Indonesia (which comprises approximately 22,500 square miles) would be identified as "Natural Gas/Onshore/Indonesia/Aceh." Similarly, the API explained that a project to develop oil offshore of Sakhalin Island, Russia (which comprises approximately 28,000 square miles) would be identified as "Oil/Offshore/Russia/Sakhalin." [295]

We continue to believe that the reasons advanced in the Proposing Release demonstrating why the API Proposal's definition of project is not appropriate remain valid and persuasive.[296] Those include the following:

- We do not agree that engaging in similar extraction activities across the territory comprising the first-level subnational political jurisdictions of countries provides the type of defining feature to justify aggregating those various activities together as a solitary project.[297] Relatedly, by so heavily focusing on subnational political jurisdictions as a defining consideration, the API's definition appears to disregard the economic and operational considerations that we believe would more typically—and more appropriately—be relevant to determining whether an issuer's various extraction operations should be treated together as one project.
- Separately, the API Proposal in our view would not generate the level of transparency that, as discussed above, we believe would be necessary or appropriate to help meaningfully achieve the U.S. Government's anti-corruption and accountability goals. By permitting companies to aggregate their oil, natural gas, and other extraction activities over large territories, the API's definition would not provide local communities with payment information at the level of granularity necessary to enable them to know what funds are being generated from the extraction activities in their particular areas.[298] This would deprive them of the

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[292] We note that the API contends that a local community does not "need contract-level disclosure to determine that someone is drilling for oil nearby or whether the community is receiving enough money from its national government." *See* letter from API 1. However, the API does not explain how the fact that a local community knows that a nearby project is ongoing can—absent the type of granular disclosure that the final rules will provide—allow that community to assess where it is receiving the portion of total revenues from the national government that are associated with the project.

[293] We believe that the project-level public-disclosure mechanism that we are adopting is a sensible, carefully tailored policy prescription to help combat corruption and promote accountability in connection with resource extraction. We acknowledge, however, that this new transparency alone will not likely eliminate corruption in this area. As we stated in the Proposing Release, the ultimate impact of the disclosures will largely depend on the ability of all stakeholders—particularly civil society, media, parliamentarians, and governments—to use the available information to improve the management of their resource extractive sector. *See* Proposing Release, n.97 and accompanying text (quoting Alexandra Gillies & Antoine Heuty, *Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource-Rich Countries,* 6 Yale J. Int'l Aff. 25 (2011)). We also find it relevant that the U.S. Government may have few other means beyond the disclosure mechanism required by Section 13(q) to directly target the myriad forms of corruption that can develop in connection with resource extraction (many of which extend well-beyond the quid-pro-quo payments that are the target of the Foreign Corrupt Practices Act), or to promote greater accountability in the use of extractive resources and the revenues generated therefrom.

[294] Among other arguments, the API stated that we should adopt the API Proposal in order to avoid potential constitutional issues under the First Amendment. *See* letter from API 1. We have carefully considered that argument but believe that the public disclosure of the type of commercial payment information involved here does not run afoul of the First Amendment. Section 13(q) and the rules that we are adopting require the disclosure of payment information involving resource extraction activities so that the citizens of each country and those acting on their behalf can help combat corruption in connection with the sale of their nation's oil, gas, and mineral resources, and can hold relevant actors accountable. *See generally* EITI Progress Report 2016, From Reports to Results, *available at http://progrep.eiti.org/2016/glance/what-eiti-does* (last visited June 16, 2016) ("A country's natural resources, such as oil, gas, metals and minerals, belong to its citizens."). We believe that the foreign policy interests involved here are compelling and substantial, as the administrative record demonstrates, and the means we have chosen to help advance those interests (including the public disclosure of contract-level payment information) are carefully tailored to do so.

[295] The API included a third example, stating that "[o]nshore development in the *Niger River delta area* would be 'Oil/Onshore/Nigeria/Delta." *See* letter from the API (Nov. 7, 2013) (emphasis added). We relied on that example in the Proposing Release, but in a recent comment, the API explained that the data for the "nine separate states in the Niger River Delta" would not in fact "be aggregated into one project"—"each state would be separate projects." *See* letter from API 1.

[296] The API stated that Congress, by requiring payment disclosure with respect to "'each project'" and "'each government'," "wanted companies to provide information about . . . the region in which the resource is located." Letter from API 1. We agree with the API on this general point, but, as discussed above, we disagree that defining the region by the major subnational political jurisdiction is required (or even suggested) by the statute as the appropriate level of transparency. *See also* Proposing Release, Section II.E.

[297] We also note the API Proposal appears to be inconsistent with how companies in the resource extraction sector often refer to their "projects" with foreign countries. Similar to the definition we are adopting, it appears that companies use the term project to refer to their concession-level or field-level operations. *See, e.g.,* Texaco's Web page *available at https://www.texaco.com/ecuador/en/history/background.aspx* (last visited June 16, 2016) (describing "Texaco Petroleum's involvement with the [Oreinte] project [that] was governed by a 28-year concession agreement"); Crescent Petroleum's Web page *available at http://www.crescentpetroleum.com/* (last visited June 16, 2016) (listing under the heading "select projects" two concession-level extraction projects—the "Onshore Sharjah Concession" and "The Mubarek Field"); New World Oil and Gas Web page *available at http://www.nwoilgas.com/projects/* (last visited June 16, 2016) (describing the "Blue Creek Project" as consisting of "one 315 sq km onshore oil concession divided into two blocks located in NW Belize"); The Dodsal Group Web page *available at http://dodsal.com/mining/projects.shtml* (last visited June 16, 2016) (listing the company's various hydrocarbon and mineral projects, each of which is described at the concession level, including Itingi, which is a "concession from the Ministry of Energy and Minerals, Government of Tanzania, for mining at a location approximately 1,250 km South-West of Dar es Salaam" and "which is approximately 101 sq. km"). *See also, e.g.,* Chevron Web page *available at https://www.chevron.com/projects* (listing as separate projects various oil fields around the globe, including the Kern River Field in California, the Captain EOR Field in the United Kingdom, and the Duri Field in Indonesia); British Petroleum's Web page *available at http://tools.bp.com/investor-tools/upstream-major-projects-map.aspx* (last visited June 16, 2016) (describing various British Petroleum projects by reference to field operations, such as the Amenas "wet-gas field," the Culzean "lean gas condensate field," and the "Clair Ridge Project" that "develops new resources from the giant Clair Field which . . . extends over an area of 85 square miles").

[298] An additional deficiency with the API Proposal, which relies on the major subnational political jurisdiction as the defining characteristic of "project," is that it could produce vastly disparate transparency from one jurisdiction to another. Residents of subnational jurisdictions that occupy a relatively small area (*e.g.*, State of Sergipe, Brazil (approximately 8,400 square miles)) would receive data that, because of the jurisdictions limited size, may be more localized; but residents of subnational jurisdictions that are relatively large in size (*e.g.*, State of Pará, Brazil (approximately 481,700 square miles)) would receive disclosures that provide potentially less localized transparency given the potentially large number of extractive activities that might be included within the project-level disclosure. By contrast, as we explained in the Proposing Release (and which no commenter disputed), oil, gas, and mining contracts not only typically cover areas that are much smaller than a

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ability, for example, to assess the relative costs and benefits of the particular license or lease to help ensure that the national government or subnational government has not entered into a corrupt, suspect, or otherwise inappropriate arrangement.

Beyond these considerations, our own experience in implementing the Foreign Corrupt Practices Act leads us to believe that the granular disclosures that our definition will produce will better help combat corruption than the aggregated (and anonymized) disclosures that the API Proposal would yield. We have found that requiring issuers to maintain detailed, disaggregated records of payments to government officials significantly decreases the potential for issuers and others to hide improper payments and as such their willingness to make such payments. This experience has led us to believe that, where corruption is involved, detailed, disaggregated disclosures of payments minimizes the potential to engage in corruption undiscovered. We thus believe that the more granular the disclosure in connection with the transactions between governments and extractive corporations, the less room there will be for hidden or opaque behavior.[299]

We acknowledge that the API Proposal's definition of "project" could lower the potential for competitive harm when compared to our proposed approach, which requires public disclosure of contract-level data. Nevertheless, we continue to believe that the potential for competitive harm resulting from the final rules is significantly reduced, although not eliminated, by the adoption of a similar definition of "project" in the European Union and Canada.[300] In this regard, we note that the transposition of the EU Directives has progressed since we issued the Proposing Release and Canada has finalized the ESTMA Guidelines and ESTMA Specifications,[301] and some issuers have already disclosed (and we expect others will shortly be disclosing) such project level information.[302] Furthermore, several commenters have questioned the API's assertion that a more granular definition of "project" would reveal commercially sensitive information.[303] For example, one of these commenters argued that "contract terms are generally known within the industry."[304] We also believe that, beyond the potential for reduced competitive harm, a disclosure requirement that is in accordance with the emerging international transparency regime is consistent with Section 13(q), including its instruction that, "[t]o the extent practicable," the Commission's rules "shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals."[305] Thus, we believe that the definition of project that we are proposing is, on balance, necessary and appropriate notwithstanding the potential competitive concerns that may result in some instances.[306]

We are also adopting the proposed approach to aggregating multiple agreements. Despite the concerns of some commenters that the standards in the proposed rule for aggregating multiple projects could result in a

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major subnational political jurisdiction, there is also a relative degree of uniformity in the size of the covered area. For example, we explained that the typical contract area for oil and gas exploration is between approximately 400 to 2,000 square miles. *See* Proposing Release, Section II.E.2. Also, mining concessions typically cover only a single mine. *Id.* Thus, we believe that our contract-level definition of project has the additional advantage of producing a level of transparency that will be more consistent across jurisdictions than the API Proposal.

We also note that the API asserts that the contract-level approach to project may, "at times, cover a broad geographic area." Letter from API 1. While we acknowledge that this may occur, we believe (as the discussion above demonstrates) that the potentially broad geographic areas that our definition may in some instances apply to are still much smaller than the geographic areas that the API's proposed definition of project would cover. Moreover, as we explained in the Proposing Release, all of the alternative approaches to defining project that were recommended would likely result in disclosure that is more aggregated (and therefore less detailed) on a geographical basis and would thus potentially be less useful for purposes of realizing the statute's objectives of increasing payment transparency to combat global corruption and promote accountability. *See* Proposing Release, Section II.E.2.

[299] We also believe that the more granular disclosures that will result from the final rules relative to the API Proposal will help provide a powerful incentive for community-based involvement in monitoring corruption and holding officials accountable by making clear to those communities in a direct and concrete fashion what revenues are being generated from their local natural resources.

[300] We disagree with the API's assertion that the implementation of the EU Directives and ESTMA does not mitigate competitive harm because "[f]orty-six of the top 100 oil and gas companies are listed only in the United States." *See* letter from API 1. Although these companies may lose the competitive advantage they previously had in the absence of rules implementing Section 13(q), an argument disputed by other commenters, we believe that any competitive harm caused by the final rules will be significantly less than what would occur in the absence of the EU Directives and ESTMA.

[301] *See* ESTMA Guidance (2016) and ESTMA Technical Reporting Specifications (2016).

[302] For example, see the following reports:

- Royal Dutch Shell plc, *Report on Payments to Governments for the Year 2015, available at http://www.shell.com/sustainability/transparency/revenues-for-governments.html* ("RDS Report");
- Total, *2015 Registration Document* (Mar. 15, 2016), *available at http://www.total.com/sites/default/files/atoms/files/registration_document_2015.pdf* ("Total Report");
- Tullow Oil plc, *2015 Annual Report & Accounts* (Mar. 15, 2016), *available at http://www.tullowoil.com/Media/docs/default-source/3_investors/2015-annual-report/tullow-oil-2015-annual-report-and-accounts.pdf* ("Tullow Report")
- BHP Billiton, *Economic Contribution and Payments to Governments Report 2015* (Sept. 23, 2015), *available at http://www.bhpbilliton.com/~/media/bhp/documents/investors/annual-reports/2015/bhpbillitoneconomiccontributionandpaymentstogovernments2015.pdf* ("BHP Report");
- Statoil, *2015 Payments to Governments, available at http://www.statoil.com/no/InvestorCentre/AnnualReport/AnnualReport2015/Documents/DownloadCentreFiles/01_KeyDownloads/2015%20Payments%20to%20governments.pdf* ("Statoil Report");
- Kosmos Energy, *Transparency, available at http://www.kosmosenergy.com/responsibility/transparency.php* ("Kosmos Report").

See also letters from Oxfam America (May 2, 2016) ("Oxfam 2") and Publish What You Pay—US (Apr. 7, 2016) ("PWYP–US 5").

[303] *See* letters from Oxfam American and EarthRights International (Mar. 8, 2016) ("Oxfam-ERI") and PWYP–US 1.

[304] *See* letter from Oxfam-ERI (noting that host countries and competitors, including state-owned companies, have the resources to access services that provide the information that the API and others have argued is commercially sensitive).

[305] *See generally* The Brussels G7 Summit Declaration ¶17 (June 5, 2014), *available at http://europa.eu/rapid/press-release_MEMO-14-402_en.htm* (last visited June 16, 2016) ("We remain committed to work towards common global standards that raise extractives transparency, which ensure disclosure of companies' payments to all governments. We welcome the progress made among G7 members to implement quickly such standards. These global standards should continue to move towards project-level reporting."). We acknowledge that Congress's instruction to "support the commitment of the Federal Government to international transparency promotion efforts" is subject to the qualification "[t]o the extent practicable." *See* Exchange Act Section 13(q)(2)(E). We believe that our project-level public disclosure regime comports with this instruction. It is now apparent that the reporting that we are requiring is practicable—that is, it is capable of being done or accomplished—because companies are already making similar disclosures pursuant to the EU Directives. Moreover, as both the Department of State and USAID have confirmed, our disclosure regime furthers the Federal Government's foreign policy interests in promoting international transparency by, among other things, fostering compatibility with the existing European Union and Canadian transparency regimes. We also believe that our, contract-based, public disclosure regime is consistent with, and furthers, the EITI, which, as noted in the comment letter from USAID, encourages implementing countries "to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals." EITI Standard at 19. *See* note 261 above and accompanying text.

[306] In this regard, and as we discuss in Section II.G.3 below, we will consider using our existing authority under the Exchange Act to provide exemptive relief at the request of a resource extraction issuer, if and when warranted. We believe that this case-by-case approach to exemptive relief would permit us to tailor any relief to the particular facts and circumstances presented, which could include facts related to potential competitive harm.

reduction of meaningful payment information, we continue to believe that the additional flexibility afforded by this approach would benefit issuers and would have limited impact on the overall level of transparency provided by the rules. As noted above, we believe that there are relatively minor differences between the approach we are adopting today and other international regimes [307] and note that many commenters supported the proposed definition.[308] As we indicated in the Proposing Release, we understand that operations under one agreement may lead to the parties entering into a second agreement for operations in a geographically contiguous area. If a change in market conditions or other circumstances compels a government to insist on different terms for the second agreement, then under our definition the use of those different terms by themselves would not preclude treating the second agreement as the same project when, operationally and geographically, work under the second agreement is a continuation of work under the first. In that way, it should reduce the burdens associated with disaggregating payments.

F. Definition of "Foreign Government" and "Federal Government"

1. Proposed Rules

In Section 13(q), Congress defined "foreign government" to mean a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, while granting the Commission the authority to determine the scope of the definition.[309] Consistent with the 2012 Rules, we proposed a definition of "foreign government" that would include a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.[310] The proposed definition is consistent with Section 13(q), which requires an issuer to identify, for each disclosed payment, the government that received the payment and the country in which the government is located.[311] It is also consistent with the EU Directives, ESTMA Guidance, and the EITI.[312] The Proposing Release also indicated that "Federal Government" means the United States Federal Government.

2. Comments on the Proposed Rules

The Proposing Release solicited comment on the scope of the definitions of "foreign government" and "Federal Government." For example, we asked whether the definition of "foreign government" should include a foreign government, a department, agency, or instrumentality of a foreign government, a company owned by a foreign government, or anything else. We also asked about the level of ownership that would be appropriate for a company to be considered owned by a foreign government. With respect to "Federal Government," we requested comment on whether we should provide additional guidance on its meaning.

We received few comments on this aspect of the proposal. Several commenters generally supported the proposed definition of "foreign government." [313] These commenters, however, recommended that the rules be revised so that "a company owned by a foreign government" would include a company where the "government has a controlling shareholding, enabling it to make the major decisions about the strategy and activities of the company," rather than requiring majority ownership as proposed. As for the definition of "Federal Government," one commenter supported the proposed approach.[314]

3. Final Rules

We are adopting the definitions of "foreign government" and "Federal Government" as proposed. Under the final rules, a "foreign government" is defined as a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. Foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.[315] "Federal Government" means the U.S. Federal Government and does not include subnational governments within the United States.

As we discussed in the Proposing Release, for purposes of identifying the foreign governments that received the payments, an issuer must identify the administrative or political level of subnational government that is entitled to a payment under the relevant contract or foreign law. Also, if a third party makes a payment on a resource extraction issuer's behalf, disclosure of that payment is covered under the final rules. Additionally, as proposed, a company owned by a foreign government means a company that is at least majority-owned by a foreign government.[316] Although we acknowledge the concerns of the commenters that argued for a more expansive definition, we believe it would be difficult for issuers to determine when the government has control over a particular entity outside of a majority-ownership context. In this regard, we note that the statute refers to a company "owned" by a foreign government, not "controlled" by a foreign government. The control concept, of course, is explicitly used in other contexts in Section 13(q).[317]

G. Annual Report Requirement

1. Proposed Rules

We proposed requiring issuers to make their resource extraction payment disclosure annually on Form SD. The proposed amendments to Form SD required issuers to include a brief statement in the body of the form directing readers to the detailed payment information provided in the exhibits to the form. Consistent with the approach under ESTMA, the proposed rules also required resource extraction issuers to file Form SD on EDGAR no later than 150 days after the end of the issuer's most recent fiscal year.[318]

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[307] The EU Directives and ESTMA Specifications both state that a "project" means "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government. Nonetheless, if multiple such agreements are substantially interconnected, this shall be considered a project." Article 41(4) of the EU Accounting Directive; ESTMA Specifications, Section 2.3.2 The EU Directives and ESTMA Specifications go on to define "substantially interconnected" as "a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the government and give rise to payment liabilities." Recital 45 of the EU Accounting Directive; ESTMA Specifications, Section 2.3.2.

[308] *See* note 259 above and accompany text.

[309] 15 U.S.C. 78m(q)(1)(B).

[310] *See* proposed Item 2.01(c)(7) of Form SD.

[311] *See* 15 U.S.C. 78m(q)(2)(D)(ii)(V).

[312] *See* EU Accounting Directive, Art. 41(3) ("Government means any national, regional or local authority . . ."); ESTMA Guidance, Section 3.2 ("[A] Payee is . . . any government . . . at a national, regional, state/provincial or local/municipal level . . ."); EITI Standard, at 25 (requiring the disclosure and reconciliation of material payments to subnational government entities in an EITI Report).

[313] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[314] *See* letter from Department of Interior.

[315] To the extent that aboriginal, indigenous, or tribal governments are subnational governments in foreign countries, payments to those government entities would be covered by the final rules.

[316] *See* proposed Item 2.01(c)(7) of Form SD.

[317] *Compare* Section 13(q)(1)(B) *with* Section 13(q)(2(A).

[318] *See* proposed General Instruction B.2 to Form SD.

2. Comments on the Proposed Rules

The Proposing Release solicited comment on whether issuers should provide the payment disclosure mandated under Section 13(q) on Form SD or whether that information should be provided on Forms 10–K, 20–F, or 40–F or a different form. We also asked whether the proposed disclosure should be subject to the officer certifications required by Exchange Act Rules 13a–14 and 15d–14 or a similar requirement.[319] In addition to requesting comment on the proposed 150 day filing deadline, we solicited comment on whether the rules should require disclosure on a fiscal year basis or an annual year basis, whether we should provide a mechanism for requesting extensions (such as by amending Exchange Act Rule 12b–25 [320]), and whether the rules should provide an accommodation to filers that are subject to both Rules 13p–1 and 13q–1, such as an alternative filing deadline.

Several commenters specifically supported using Form SD, and no commenters suggested an alternative approach.[321] Nevertheless, some of the commenters conditioned their support for Form SD on the disclosures being filed rather than furnished.[322] The commenters addressing the filing deadline all supported the proposed 150 day requirement,[323] although several commenters recommended providing a phase-in period for newly public companies or newly acquired companies.[324] One of these commenters agreed with our assessment that the proposed deadline would reduce compliance costs by allowing issuers to use their existing processes and reporting systems to produce the disclosure.[325] Other commenters noted that the proposal was consistent with the Canadian and United Kingdom regimes.[326] These commenters also supported allowing issuers to rely on Rule 12b–25 to request extensions, subject to certain conditions.

No commenters suggested requiring officer certifications. Some commenters stated that certifications were unnecessary in light of the possibility for Exchange Act Section 18 liability.[327] One commenter opposed such a requirement, stating that it would add significant costs with little benefit.[328]

Some commenters specifically supported the proposed approach of using an issuer's fiscal year as the reporting period.[329] These commenters, however, incorrectly assumed that the data was tagged by quarterly period so that users could generate their own calendar year reports if they chose to do so. It is unclear whether those commenters would have recommended a different approach if, as proposed, the data is not tagged by fiscal quarter.[330] The Department of Interior did not make a specific recommendation regarding the reporting period, but noted that the USEITI MSG decided to use calendar year reporting for the USEITI because it reduced the burden on reporting companies, many of which use the calendar year as their fiscal year.[331]

3. Final Rules

We are adopting the final rules as proposed, with two new targeted exemptions that provide for transitional relief or delayed reporting in limited circumstances. These exemptions provide a longer transition period for recently acquired companies that were not previously subject to reporting under the final rules and a one-year delay in reporting payments related to exploratory activities.[332]

Section 13(q) requires a resource extraction issuer to provide the required payment disclosure in an annual report but otherwise does not specify the location of the disclosure. We believe Form SD is an appropriate form since it is already used for specialized disclosure not included within an issuer's periodic or current reports, such as the disclosure required by the rule implementing Section 1502 of the Act.[333] We also believe that using Form SD would facilitate interested parties' ability to locate the disclosure and address issuers' concerns about providing the disclosure in their Exchange Act annual reports on Forms 10–K, 20–F, or 40–F.[334] For example, requiring the disclosure in a separate form, rather than in issuers' Exchange Act annual reports, eliminates concerns about the disclosure being subject to the officer certifications required by Exchange Act Rules 13a–14 and 15d–14 and allows the Commission to adjust the timing of the submission without directly affecting the broader Exchange Act disclosure framework.[335]

While Section 13(q) mandates that a resource extraction issuer include the relevant payment disclosure in an "annual report," it does not specifically mandate the time period in which a resource extraction issuer must provide the disclosure. We continue to believe that the fiscal year is the more appropriate reporting period for the payment disclosure. Despite the USEITI's use of calendar year reporting, we believe fiscal year reporting would reduce resource extraction issuers' compliance costs by allowing them to use their existing tracking and reporting systems for their public reports to also track and report payments under Section 13(q). Finally, we note that ESTMA and the EU Directives also require reporting based on the fiscal year, with ESTMA using the same deadline contained in the proposed rules.[336] Thus, using a fiscal year reporting period should promote consistency and comparability across payment transparency regimes.

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[319] We solicited comment on a similar question in Section II.G.6 of the Proposing Release. We address the responses to that request for comment in this section as well.

[320] 17 CFR 240.12b–25.

[321] *See* letters from PWYP–US 1 and USSIF. *See also* letters from ACEP; Encana; Global Witness 1; and Oxfam 1.

[322] *See* letter from PWYP–US 1. *See also* letters from ACEP; Encana; Global Witness 1; and Oxfam 1.

[323] *See* letters from Encana and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[324] *See* letters from Cleary and Michael R. Littenberg, Ropes & Gray (Feb. 16, 2016) ("Ropes & Gray").

[325] *See* letter from Encana.

[326] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[327] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[328] *See* letter from Encana.

[329] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[330] The proposed rules provided for tagging of the "financial period in which the payments were made" and defined "financial period" as "the fiscal year in which the payment was made." *See* proposed Item 2.01(a)(5), (c)(6) of Form SD. The final rules take the same approach, although we have clarified the text so as to avoid similar confusion. *See* Item 2.01(a)(5).

[331] *See* letter from Department of Interior.

[332] *See* Section II.I.3 below for a discussion of the latter provision.

[333] Rule 13p–1 [17 CFR 240.13p–1]. *See also* Exchange Act Release No. 34–67716 (Aug. 22, 2012), 77 FR 56273 (Sept. 12, 2012) ("Conflict Minerals Release").

[334] *See also* 2012 Adopting Release, nn.366–370 and accompanying text. Under the rules proposed in the 2010 Proposing Release, a resource extraction issuer would have been required to furnish the payment information in its annual report on Form 10–K, Form 20–F, or Form 40–F. Certain commenters continued to support this approach prior to the Proposing Release. *See* letter from Susan Rose-Ackerman (Mar. 28, 2014) ("[t]here is no need for the cost of a separate report."). No commenters raised similar concerns after the Proposing Release.

[335] In this regard, we previously considered permitting the resource extraction payment disclosure to be filed in an amendment to Form 10–K, 20–F, or 40–F, as applicable, but were concerned that this might give the false impression that a correction had been made to a previous filing. *See* 2012 Adopting Release, n.379 and accompanying text.

[336] *See* ESTMA, Section 9(1) ("Every entity must, not later than 150 days after the end of each of its financial years, provide the Minister with a report that discloses, in accordance with this section, the payments that it has made during that year."); EU Accounting Directive, Art. 43(2) ("The report shall disclose the following information . . . in respect of the relevant financial year."); EU Transparency Directive, Art. 6 ("The report shall be made public

We are also adopting the proposed 150 day deadline. As discussed above, none of the commenters on the Proposing Release suggested a different deadline, and we continue to believe that it is reasonable to provide a filing deadline that is later than the deadline for an issuer's annual report under the Exchange Act. Although certain commenters discussed above supported allowing issuers to rely on Rule 12b–25 to request an extension to the filing deadline, we do not believe that is necessary. In this regard, we note that none of the potential issuers that provided comments recommended including an extension process. Moreover, we believe 150 days is sufficient time to prepare timely disclosure regarding the prior fiscal year.

Nevertheless, we do believe it is appropriate to provide transitional relief for recently acquired companies where such companies were not previously subject to the rules, as recommended by certain commenters.[337] As these commenters noted, we included a similar provision in Rule 13p–1.[338] The final rules therefore allow issuers that have acquired or otherwise obtain control over an issuer whose resource extraction payments are required to be disclosed under the final rules, and that has not previously been obligated to provide such disclosure pursuant to Rule 13q–1 or another "substantially similar" jurisdiction's requirements in its last full fiscal year, to not commence reporting payment information for the acquired company until the Form SD filing for the fiscal year immediately following the effective date of the acquisition.[339] Unlike the targeted exemption for payments related to exploratory activities described in Section II.I.3 below, the excluded payment information is not required to be disclosed in the Form SD filing covering the immediately following fiscal year. We do not believe it is necessary to provide similar transitional relief for newly acquired companies that were already required to report such payments or companies conducting initial public offerings. Such companies should already be familiar with the reporting requirements or would have sufficient notice of them to establish reporting systems and prepare the appropriate disclosure prior to undertaking the initial public offering.

H. Public Filing

1. Proposed Rules

Recognizing the purposes of Section 13(q) and the discretion provided by the statute, and taking into account the views expressed by various commenters,[340] we proposed requiring resource extraction issuers to provide the resource extraction payment disclosure publicly. We believed that requiring public disclosure, including the issuer's name, would best accomplish the purpose of the statute. As explained more fully below, we were not persuaded by certain commenters' suggestion that issuers should submit their annual reports to the Commission confidentially and that the Commission should use those confidential submissions to produce an aggregated, anonymized compilation that would be made available to the public.[341]

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on whether issuers should be permitted to submit the required payment disclosure on a confidential basis. We also asked whether issuers should be required to file certain aggregate information publicly if we allow them to file certain disaggregated information with us confidentially.

Numerous commenters supported, as a general policy matter, the concept of publicly disclosing payment information.[342] A number of other commenters supported public filing in the specific manner we proposed.[343] These commenters generally stated that allowing for confidential submission would undermine the transparency goals of Section 13(q) and compromise the usefulness of the disclosure. For example, the Department of Interior stated that permitting confidential disclosure would contravene the transparency objectives of the statute and that continued successful USEITI implementation requires the public disclosure of payments for all revenue streams and by project.[344]

On the other hand, several commenters recommended allowing for confidential submission of the detailed payment information, which would then be aggregated in an anonymized format by the Commission before being publicly released.[345] These commenters stated that their recommended approach would reduce the burden and competitive harm caused by public disclosure of each issuer's specific filings. These commenters said that such public disclosure forces issuers to reveal highly confidential, commercially-sensitive information and could endanger the safety of an issuer's employees. They also stated that these harms would not be mitigated by the European Union or Canadian disclosure regimes because 46 of the top 100 oil and gas companies are listed only in the United States, with many having no reportable operations in Europe or Canada, or only limited operations in those jurisdictions conducted through subsidiaries.

3. Final Rules

Section 13(q) provides the Commission with the discretion to require public disclosure of payments by resource extraction issuers or to permit confidential filings.[346] In addition, the statute directs the Commission to provide, to the extent practicable, a public compilation of this disclosure. Consistent with the proposed rules, we continue to believe that requiring public disclosure of each issuer's specific filings (including all the payment information) would best accomplish the purpose of the statute. Therefore, taking into account commenters' views, we are exercising the discretion to adopt final rules that require issuers to disclose the full payment information publicly, including the identity of the issuer.

As discussed in the Proposing Release, several factors continue to influence our approach.[347] First, the statute requires us to adopt rules that further the interests of international

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at the latest six months after the end of each financial year . . . .").

[337] *See* letters from Cleary and Ropes & Gray.

[338] Instruction (3) to Item 1.01 of Form SD states that "[a] registrant that acquires or otherwise obtains control over a company that manufactures or contracts to manufacture products with conflict minerals necessary to the functionality or production of those products that previously had not been obligated to provide a specialized disclosure report with respect to its conflict minerals will be permitted to delay reporting on the products manufactured by the acquired company until the end of the first reporting calendar year that begins no sooner than eight months after the effective date of the acquisition." The final rules differ, however, from what is provided for under Rule 13p–1 because disclosure under Rule 13p–1 occurs on a calendar year basis, not a fiscal year basis.

[339] *See* Item 2.01(b) of Form SD.

[340] *See* Proposing Release, n.241 and accompanying text.

[341] *See* Proposing Release, Section II.G.2. *See also id.* at n.301.

[342] *See* Form Letter A and Form Letter B.

[343] *See* letters from ACEP; Bean; Department of Interior; State Department; Global Witness 1; Peck & Chayes; Oxfam 1; PWYP–US 1; Quinones; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; USAID; and USSIF.

[344] *See* letter from Department of Interior.

[345] *See* letters from API 1; Chevron; ExxonMobil 1.

[346] *See API* v. *SEC,* 953 F. Supp. 2d 5 (D.D.C., 2013).

[347] We incorporate the discussion from Section II.G.2 of the Proposing Release.

transparency promotion efforts, to the extent practicable.[348] In this regard, we find it significant that several existing transparency regimes now require public disclosure of each reporting company's annual report, including the identity of the company, without exception.[349] A public disclosure requirement under Section 13(q) would further the statutory directive to support international transparency promotion efforts by enhancing comparability among companies, as it would increase the total number of companies that provide public, project-level disclosure. It would also be consistent with the objective of ensuring that the United States is a global "leader in creating a new standard for revenue transparency in the extractive industries." [350]

Second, the United States is currently a candidate country under the EITI, which requires it to provide a framework for public, company-by-company disclosure in the EITI report. At least with respect to reporting of payments to the Federal Government, requiring issuers to provide their annual reports publicly on Form SD is consistent with the U.S. Government's policy commitments under the USEITI. As noted above, the Department of Interior has stated that permitting confidential disclosure would contravene USEITI implementation.

Third, we continue to believe that exercising our discretion to require public disclosure of the information required to be submitted under the statute is supported by the text, structure, and legislative history of Section 13(q).[351] In our view, our exercise of discretion in this manner is consistent with the statute's use of the term "annual report," which is typically a publicly filed document,[352] and Congress's inclusion of the statute in the Exchange Act, which generally operates through a mechanism of public disclosure.[353] Furthermore, we observe that Section 13(q) requires issuers to disclose detailed information in a number of categories, without specifying any particular role for the Commission in using that information. For example, Section 13(q) requires disclosure of "the business segment of the resource extraction issuer that made the payments" and "the currency used to make the payments." We generally do not believe that these data points would be useful to the Commission for preparing an aggregated, anonymized compilation as the data points would not be necessary to present aggregated payment information and otherwise would not be reflected in such a compilation. We believe that this is a further indication that Congress intended for the information to be made publicly available. We believe that this is a further indication that Congress intended for the information to be made publicly available. Finally, neither the statute's text nor legislative history includes any suggestion that the required payment disclosure should be confidential. In fact, the legislative history supports our view that the information submitted under the statute should be publicly disclosed.[354]

More fundamentally, we believe that the public release of issuers' annual reports is necessary to achieve the U.S. interest in providing a level of payment transparency that will help combat corruption and promote accountability in resource-rich countries, as Section 13(q) was intended to do. The comments that we have received, as well as our own consideration of the record and the views that we have received from other U.S. and foreign governmental agencies with expertise in this area, persuade us of this.[355]

We have carefully considered the API's assertion that the "purpose of enabling people to hold their governments accountable for the revenues generated from resource development is achieved as long as citizens know the amount of money the government receives, not the companies that make each individual payment." [356] We have also carefully considered the API's related assertion that the Commission has failed "to connect [Section 13(q)'s] objectives to the specific approach in the proposed rule—mandatory public disclosure by issuers in their annual reports, as opposed to confidential disclosure by issuers followed by a public compilation produced by the Commission.'' [357] For the reasons discussed below, we do not agree with either of these assertions.

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[348] Section 13(q)(2)(E).

[349] *See, e.g.*, ESTMA Specifications, Section 2.4 ("Reporting Entities are required to publish their reports on the Internet so they are available to the public"); EITI Standard (2013) at 6 (requiring all EITI reports to show payments by individual company rather than aggregated data) and EITI Standard (2016) at Section 2.5(c) (in addition to individual company disclosure, requiring disclosure of the company's beneficial owners in EITI reports by 2020); and EU Accounting Directive Arts. 42(1) and 45(1) (requiring disclosure of payments to governments in a report made public on an annual basis and published pursuant to the laws of each member state.)

[350] 156 Cong. Rec. S5873 (July 15, 2010) (Statement of Senator Cardin); *id.* at S3815 (May 17, 2010) (Statement of Senator Cardin) (describing Congress's intention to create "a historic transparency standard that will pierce the veil of secrecy that fosters so much corruption and instability in resource-rich countries").

[351] We acknowledge that the statutory interpretation arguments we identify do not demonstrate an unambiguous Congressional intent to require public disclosure. Nevertheless, these arguments, and the related ambiguity, do lead us to reject the API's contrary contention that "the *plain language* of the statute confirms that the Commission should require companies to disclose payment information to the Commission confidentially[.]" Letter from API 1 (emphasis added). We believe that, at a minimum, Congress provided the Commission with discretionary authority. As such, based on our assessment of the record evidence and our weighing of the various policy considerations, we have determined to exercise that discretion by requiring public disclosure of each issuer's annual report on Form SD. Moreover, we believe that the statutory interpretation considerations discussed in this Section II.H demonstrate that our approach is a permissible under the statute.

[352] *See e.g.*, Form 10–K, Form 20–F, Form 10–Q, Form 8–K, etc.

[353] The Exchange Act is fundamentally a public disclosure statute. *See generally Schreiber* v. *Burlington Northern, Inc.*, 472 U.S. 1, 12 (1985) ("the core mechanism" is "sweeping disclosure requirements" that allow "shareholder choice"); *Longman* v. *Food Lion, Inc.*, 197 F.3d 675, 682 (4th Cir. 1999) (embodies a "philosophy of public disclosure"); *Franklin* v. *Kaypro Corp.*, 884 F.2d 1222, 1227 (9th Cir. 1987) ("forc[es] public disclosure of facts"). Accordingly, the reports that public companies are required to submit under the Exchange Act—such as the annual report on Form 10–K giving a comprehensive description of a public company's performance—have always been made public. Adding a new disclosure requirement to the Exchange Act, and doing so for the clear purpose of fostering increased transparency and public accountability, is a strong indication that Congress intended for the disclosed information to be made public.

[354] *See, e.g.*, 156 Cong. Rec. S3976 (May 19, 2010) (Statement of Senator Feingold) ("This amendment would require companies listed on U.S. stock exchanges to disclose in their SEC filings extractive payments made to foreign governments for oil, gas, and mining. This information would then be made public, empowering citizens in resource-rich countries in their efforts to combat corruption and hold their governments accountable."); *id.* at S5872 (July 15, 2010) (Sen. Cardin) ("This [amendment] will require public disclosure of those payments."); *see also id.* at S3649 (May 12, 2010) (proposed "sense of Congress" accompanying amendment that became Section 13(q)) (encouraging the President to "work with foreign governments" to establish their own "domestic requirements that companies under [their jurisdiction] *publicly disclose* any payments made to a government" for resource extraction) (emphasis added); *id.* at H5199 (June 29, 2010) (Joint Explanatory Statement of the Committee of Conference) (the amendment "requires *public disclosure* to the SEC of any payment relating to the commercial development of oil, natural gas, and minerals") (emphasis added).

[355] The API asserted that publication of each issuer's annual report could cause competitive harm, but that keeping the disclosures confidential with the public release of only an aggregated, anonymized compilation will "minimize . . . the competitive harm to issuers by omitting the most sensitive data." *See* letter from API 1. We believe the targeted exemption we are providing in connection with payments relating to exploratory activities should help to mitigate such competitive harms. *See* Section II.I.3 below. In addition, as we discuss in the economic analysis, see Section III.B.2.c below, we believe that the other claimed competitive harms may be overstated. Moreover, the data that the API would exclude from public disclosure is, as we discuss above, necessary to provide the type of granular and localized transparency that will, in our view, help to combat corruption and promote accountability. We thus believe that, on balance, the potential competitive harms that might result from the public disclosure of each issuer's annual report is necessary and appropriate in furtherance of Section 13(q)'s objectives.

[356] *See* letter from API 1.

We believe that disclosing an issuer's identity is important to help achieve the objectives of Section 13(q). In this regard, we note that one of the proponents of the API's approach stated that ''[f]or the API model to work,'' each payer's identity must be revealed.[358] We further note that, after a decade of experience, the EITI (to which the API and many of its members are active participants) has now determined that company-specific, project-level disclosure is necessary to further the EITI's goals.[359]

Furthermore, as we explained in the Proposing Release, the record supports a number of specific ways in which company-specific public disclosures can facilitate the twin goals of helping to reduce corruption in the extractives sector and promoting governmental accountability. For example, public disclosure of company-specific, project-level payment information may help assist citizens, civil society groups, and others to monitor individual issuer's contributions to the public finances and ensure firms are meeting their payment obligations. We explained that such data may also help various actors ensure that the government is properly collecting and accounting for payments.[360] We also explained that, relatedly, an important additional benefit of company-specific and project-level transparency is that it would act as a strong deterrent to issuers underpaying royalties' or other monies owed. We believe the record also supports the potential that the public disclosure of company-specific, project-level data may reduce the willingness of resource extraction issuers to participate in deals where they believe the revenues may be corruptly diverted from the government coffers.[361] With our decision to include contractually required social and community payments among the required disclosures, we now perceive an additional potential benefit of company-specific, project-level public disclosure.[362] Local communities may be able to ensure that they are in fact receiving the promised payments and that those payments are being used by the governments receiving the funds for the benefit of the community. We believe much the same is true with respect to contractual obligations regarding in-kind infrastructure development.[363]

We note that the API asserts that ''Section 13(q) was passed to increase the accountability of governments, not to force public companies to pay more to develop natural resources, or to expose them to activism by special interest groups.'' [364] While we recognize the API's point, we nonetheless believe that its view of the anti-corruption and accountability objectives underlying Section 13(q) is unduly narrow. In our view, the U.S. foreign policy interest in helping citizens to hold their governments accountable for the management of the public's natural resources (and preventing corruption in connection with the extraction of those resources) [365] includes, among other things, providing transparency to help ensure that the transactions that the government enters are producing a return that the citizens believe is appropriate, and providing transparency to citizens and members of civil society to help ensure that the transactions do not involve suspect or corrupt payment arrangements. We thus agree with the position advanced by USAID that ''[i]t is through disaggregated data, which includes the identity of the payer and the location and type of the project, that transparency will be promoted.'' [366] As USAID explained in its comment:

> [T]ransparency about corporate payments to governments is a prerequisite to the effective engagement of citizens to ensure that such revenues are managed responsibly and for the benefit of a country's citizens. Such engagement is only possible if the citizens know which company is paying what kind of payment to which government entity relating to which project in which location. Aggregate data about multiple resources, projects, or geographic locations does not allow citizens of a particular[ ] region to speak up and insist that the revenues associated with the project impacting them be used for their benefit, rather than to personally benefit potentially corrupt government officials.[367]

In addition, we believe that providing an issuer's Form SD filings to the public through the searchable, online EDGAR system, which will enable users of the information to produce their own up-to-date compilations in real time, is both consistent with the goals of the statute and the Commission's obligation, to the extent practicable, to ''make available online, to the public, a compilation of the information required to be submitted'' by issuers.[368] Under this

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[357] *See id.*

[358] *See* letter from ASP.

[359] *See* Proposing Release, Section II.E.1, n.194, and Section II.G.2.

[360] *See* Proposing Release, Section I.E.2.

[361] *See* letter from Publish What You Pay—US (second of three letters on Mar. 8, 2016) (''PWYP–US 3'') (explaining that a resource extraction issuer took part in a transaction in Nigeria knowing that the revenues were going to be diverted from the Nigerian government to a Nigerian oil minister, and explaining that aggregation and anonymization of such payments would have made it more difficult for the public and civil society ''to trace where the payment ended up or even find out that it had been made''). *See generally* U.S. Senate Permanent Subcommittee on Investigations, Committee on Government Affairs, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank Report, at 98–111 (July 14, 2004) (providing examples of the roles that resource extraction companies can play in facilitating the suspect or corrupt practices of foreign officials seeking to divert resource extraction payments that belong to the government).

[362] *See* Section II.C above.

[363] *See, e.g.,* letter from PWYP–US 1 (explaining that in Equatorial Guinea, ''the government has used social payments as cover under which to approach U.S.-listed oil and gas companies about financing projects that appear to have been motivated by the whims of individual government officials and had little to do with social development. . . . This raises concerns that social payments, if allowed to remain opaque, could be misused to channel corrupt payments, special favors, and kickbacks, creating a gray zone of illicit payments that may not be easily monitored or policed by the [Foreign Corrupt Practices Act].''). *See also* letter from ASP (''Even with an explicit legal prohibition on bribery, however, it is not always clear what constitutes corruption, as contracts can be written that favor individuals or companies. . . '').

[364] *See* letter from API 1.

[365] *See* 156 Cong. Rec. S3816 (May 17, 2010) (Sen. Lugar) (explaining that Section 13(q) is intended to ''help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues''). *See also id.* at S5873 (July 15, 2010) (Sen. Cardin) (explaining that Section 13(q) will help citizens ''ensure that their country's natural resource wealth is used wisely for the benefit of the entire nation and for future generations'').

[366] *See* letter from USAID. *See also* letter from BHP (''Transparency by governments *and companies* alike regarding revenue flows from the extraction of natural resources in a manner which is meaningful, practical, and easily understood by stakeholders reduces the opportunity for corruption.'')

[367] *See* letter from USAID. *See also id.* (''Aggregated information that contains numerous companies' payment histories does not allow for citizens to understand or engage with extraction companies operating in their geographical area.''); letter from State Department (expressing ''approval'' of the proposed rule's ''company-specific, project-level public disclosure'' provisions and explaining that ''[t]his level of transparency required by the proposed rule is key for ensuring that citizens have the necessary means to hold their governments accountable. . . . [T]he rule's requirements directly advance the United States' foreign policy interests in increasing transparency and reducing corruption in the oil, gas, and minerals sectors and strengthen the United States' credibility and ability to fight corruption more broadly. . . .).

[368] The legislative history surrounding the adoption of Section 13(q) indicates that Congress likely did not intend for the public compilation requirement to serve as a substitute for the public disclosure of an issuer's annual reports. Rather, the public compilation requirement, added to an earlier version of the legislation that became Section 13(q), was intended for the convenience of the users of that data—many of whom were not seeking the information for purposes of investment activity and

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approach, all the filings will be separately searchable on EDGAR and the information provided can be extracted and viewed on an individual basis or as a compilation. Indeed, this approach provides users of the disclosure with more current and immediately available information than the API's proposed compilation, which would provide only one annual update.[369] That said, we appreciate that some commenters have asserted that the statutory language could be read to require that the Commission periodically make available its own compilation of the information that issuers provide in their annual reports on Form SD.[370] Accordingly, we are including a provision in the final rules providing that the Commission's staff will periodically make a separate public compilation of the payment information submitted in issuers' Forms SD available online. Under the final rules, the staff may determine the form, manner, and timing of each compilation, except that no information included therein may be anonymized.[371]

In sum, we believe that public disclosure of each issuer's Form SD is important to further Section 13(q)'s foreign policy objectives of helping to reduce corruption and enhance the ability of citizens to hold their governments accountable for the management of the natural resources in their country and the use of the revenues generated by those resources.[372] We therefore have exercised our discretion under Section 13(q) to require issuers to disclose publicly their Forms SD.

I. Exemption From Compliance

1. Proposed Rules

In the Proposing Release, we noted that many commenters previously had requested exemption from Section 13(q)'s disclosure requirements, in particular in cases where the required payment disclosure is prohibited under the host country's laws. We noted that some commenters had identified specific countries that they claimed prohibit disclosure while other commenters challenged those statements. Given commenters' conflicting positions and representations, and consistent with the EU Directives and ESTMA, we did not propose any blanket or per se exemptions. Instead, we indicated that we would consider using our existing authority under the Exchange Act to provide exemptive relief at the request of issuers, if and when warranted.[373] We stated our belief that a case-by-case approach to exemptive relief using our existing authority was preferable to either adopting a blanket exemption or providing no exemptions. We also stated that, among other things, such an approach would permit us to tailor the exemptive relief to the particular facts and circumstances presented, such as by permitting some alternative form of disclosure that might comply with the foreign country's law or by phasing out the exemption over an appropriate period of time.[374]

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on whether a case-by-case exemptive process was a better alternative than providing a rule-based blanket exemption for specific countries or other circumstances, or providing no exemptions. We also asked whether any foreign laws prohibit the disclosure that would be required by the proposed rules, or if there was any information that had not been previously provided by commenters that supports an assertion that such prohibitions exist and are not limited in application. We also asked whether the EU Directives' and ESTMA's lack of an exemption for situations when disclosure is prohibited under host country law had presented any problems for resource extraction issuers subject to those reporting regimes.

A number of commenters supported the proposed approach.[375] One of these commenters, while "strongly support[ing]" our approach, urged the Commission to consider existing commercial relationships when responding to requests for exemptive relief.[376] This commenter noted that contractual confidentiality clauses usually allow the contractual parties to provide confidential information requested by court order or regulatory

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thus would potentially be unfamiliar with locating information in the extensive annual reports that issuers file. In the earlier versions of the draft legislation, the resource extraction payment disclosures were required to be made in *the* annual report that each issuer was already required to file under the securities laws. *See, e.g.,* Extractive Industries Transparency Disclosure Bill (H.R. 6066) (May 2008) ("requir[ing] that each issuer required [to] file an annual report with the Commission shall disclose *in such report*" the resource extraction payments that the issuer makes) (emphasis added). For the convenience of non-investor users of the data, the provision included a separate section entitled "Public Availability of Information" that provided in pertinent part: "The Securities and Exchange Commission shall, by rule or regulation, provide that the information filed by all issuers . . . be compiled so that it is accessible by the public directly, and in a compiled format, from the Web site of the Commission *without separately accessing . . . the annual reports of each issuer filing such information.*" *Id.* (emphasis added). As the proposed legislative language was later being incorporated into the Exchange Act, the Commission's staff gave technical advice that led to the modification of the legislative text to provide the Commission with additional flexibility to permit the disclosures in an annual report *other than* "the annual report" that issuers already file so as to avoid unnecessarily burdening issuers. *See* 156 Cong. Rec. S3815 (May 17, 2010) (Statement of Senator Cardin) ("We have been working with a lot of groups on perfecting this amendment, and we have made some changes that will give the SEC the utmost flexibility in defining how these reports will be made so that we get the transparency we need without burdening the companies."). Our decision to utilize Form SD rather than to require the disclosures in an issuer's annual report, when coupled with the functionality that the EDGAR system provides, in our view sufficiently addresses the Congressional concern that originally led to the separate requirement of a publicly available compilation.

[369] Our recommended approach would provide investors with information that would be immediately available to all users upon filing. In contrast, under the API Proposal, users of the information could have to wait to access the information for months after an issuer files its Form SD (when the Commission publishes its next periodic compilation). For example, assume that the Commission issues a compilation annually on December 1st of each year. If an issuer files its annual Form SD on January 1st, the information in that report would not be publicly available for another eleven months if the Forms SD were held confidentially. Under the approach being adopted, however, the information will be made publicly available as soon as the Form SD is filed on EDGAR.

[370] *See* letter from API 1 (discussing the compilation requirements in Section 13(q)(3)).

[371] *See* Rule 13q–1(e). We do not anticipate that the staff will produce such a compilation more frequently than once a year.

[372] The API contends that, "[b]y requiring disaggregated, contract-level public disclosures," our rule "will make it more difficult for parties seeking information about how much governments are ultimately receiving to obtain that information." Letter from API 1. The API claims that, by contrast, a "public compilation that aggregates the total amount of money paid to governments for oil, gas, and minerals" would be "more informative." *Id.* We note that, in advancing this contention, the API appears to assume that the Section 13(q) disclosures are designed only to provide information about how much governments are ultimately receiving. Nevertheless, as we have described above, we believe that the transparency provided by the disaggregated, project-level disclosures significantly advances broader anti-corruption and accountability goals. Even so, we note that to the extent a particular user is focused on learning about how much money governments are ultimately receiving, EDGAR's functionality will allow them to generate this information from the filed annual reports.

[373] *See* Section 36(a) of the Exchange Act (15 U.S.C. 78mm(a)).

[374] For example, if a resource extraction issuer were operating in a country that enacted a law that prohibited the detailed public disclosures required under our proposal, the Commission could potentially issue a limited exemptive order (in substance and/or duration). The order could be tailored to either require some form of disclosure that would not conflict with the host country's law and/or provide the issuer with time to address the factors resulting in non-compliance.

[375] *See* letters from ACTIAM et al. (Calvert separately commenting that it preferred no exemption despite being a signatory to this letter); Bean; Cleary; and Petrobras.

[376] *See* letter from Petrobras.

bodies, but condition such disclosure on the maintenance of confidentiality by the receiving entity.

Many other commenters supported the proposed approach, but preferred not providing any exemptions.[377] A number of these commenters recommended granting an exemption only if the request relates to a foreign law prohibition pre-dating the passage of Section 1504.[378] Commenters also disputed claims that foreign law prohibitions exist or that they would have competitive harm.[379]

Numerous commenters recommended not providing any exemptions.[380] For example, the Department of Interior noted that federal leases for natural resource development on federal lands and waters are public and do not contain confidentiality provisions. This commenter stated that, consistent with the contract transparency provisions under the EITI Standard, USEITI reporting includes disclosure of these leases and that providing an exemption would contravene the transparency objectives of Section 13(q) and the Federal Government.

Several commenters supported blanket exemptions instead of the proposed case-by-case approach.[381] These commenters sought exemptions for disclosure that would violate a host country's laws, conflict with the terms of existing contracts, or reveal commercially sensitive information. These commenters also sought an exemption for disclosure that would jeopardize the safety of an issuer's personnel.[382] They were concerned that the cost of not receiving an exemption, particularly when a foreign law prohibition was in place, could be very high if the issuer was required to cease operations in the host country as a result of the prohibition and liquidate its fixed assets at a steep discount. They also noted the volatility of the regions in which they operate, the potential for terrorist attacks, and the existence of confidentiality provisions in older resource extraction agreements.

The API and certain other industry commenters sought various blanket exemptions.[383] With respect to an exemption for foreign law prohibitions on disclosure, these commenters asserted that both Qatar and China prohibit the required disclosure.[384] They were also concerned that it would be difficult to obtain timely exemptive relief on a case-by-case basis if exemptions would have to be granted by the full Commission. To address these concerns, they recommended the following three alternatives to the proposed approach, in order of preference: (1) Exempting issuers from reporting payments in any country whose laws prohibit the disclosure; (2) exempting issuers from reporting payments in any country whose laws prohibited the disclosures, so long as those laws existed before the Commission adopted its rules; and (3) exempting issuers from reporting payments in specific countries where the risk to issuers is particularly acute.

As for disclosure that would reveal commercially sensitive information, these commenters recommended allowing issuers to redact payment information temporarily until a later time when the disclosure would be less harmful (*e.g.*, after news of a new discovery is public knowledge). The API explained that such an exemption would be particularly appropriate for exploratory activities and new finds, but acknowledged that the commercial terms of older projects are generally publicly known (even if the contracts are not technically publicly disclosed), thus suggesting that an exemption would generally not be necessary to protect commercially sensitive information for older projects. They also recommended exempting disclosure in situations where revealing payment information would breach contractual obligations that existed before Congress passed Section 13(q) or when it might jeopardize the safety of an issuer's employees (including physical harm or criminal prosecution) or the national security of a host nation.

In addition to these broader recommendations about the types of exemptions that should be included in the rules, commenters also made recommendations with respect to the process for granting exemptions. A few commenters were concerned that the exemption requests would be considered in a public forum, which could result in disclosure of competitively sensitive information or violate host country law.[385] One of these commenters requested, at a minimum, that the rules follow an exemptive approach where any claimed exemption would require issuers to make reasonable efforts to obtain permission for disclosure, file legal opinions supporting any non-disclosure, and be subject to review by the Commission, but would otherwise be self-executing.[386] Another commenter recommended using a no-action letter process with delegated authority to the Division of Corporation Finance, which it believed would be both flexible and practical.[387]

Numerous commenters recommended a public process for exemption applications.[388] Many of these commenters specifically called for a process that involved notice and comment.[389] Some of them specifically recommended requiring issuers to apply for exemptions using Exchange Act Rule 0–12.[390] Some of these commenters recommended that the rules provide clear guidance on the criteria that would be used to evaluate applications for exemptions.[391] One of them also recommended an instruction clarifying that exemptions will be granted rarely and only for extremely compelling reasons.[392]

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[377] *See* letters from ACEP; Calvert; Global Witness 1; Oxfam 1; PWYP–US 1; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; and USSIF.

[378] *See* letters from Sen. Cardin et al.; Sen. Lugar et al.

[379] *See* letters from Global Witness (Mar. 8, 2016) ("Global Witness 2") ("Nor is there any persuasive evidence of the existence of secrecy laws that are in conflict with Section 13(q), as the Commission itself determined in 2012, and as we and others have argued."); Natural Resource Governance Institute (Second of two letters on Feb. 16, 2016) ("NRGI 2") ("In practice, there is therefore no blanket exclusion of covered companies from awards in [Angola, Cameroon, China, and Qatar]. Our findings further show that the covered companies have not been significantly affected in their ability to secure contracts in [those] countries after the adoption of Section 1504."); McCarthy (stating that Angola's Production Sharing Agreements provide a standard exception from confidentiality to comply with any applicable laws or regulations and disputing any competitive harm to companies required to report payments to host governments in Angola, Cameroon, China, or Qatar); Oxfam 2 (noting the disclosure of payments to governments in China and Qatar in the RDS Report and providing additional evidence of a lack of foreign law prohibition on payment disclosure under Qatari law); Oxfam-ERI ("No country prohibits disclosure, and the Commission should not grant any categorical exemptions."); PWYP–US 1 ("There are no foreign laws prohibiting disclosure of the information required under Section 13(q)."); TI–USA ("[W]hile it has been alleged that Angolan law prohibits the disclosure of resource extraction payments . . . Statoil publicly reports such payments to the Angolan government."); PWYP–US 5 (noting the disclosure of payments to governments in China and Qatar in the Total Report and Tullow Report).

[380] *See* Form Letter A; Form Letter B and letters from Department of Interior; Peck & Chayes; Quinones; and NRGI 1.

[381] *See* letters from API 1; Chevron; ExxonMobil 1; and Nouveau.

[382] *See* 2012 Adopting Release, n.69 and accompanying text. *See also* letters from API 1 and Chevron. Other commenters opposed such an exemption and stated that increased transparency would instead increase safety for employees. *See* 2012 Adopting Release, n.70 and accompanying text. *See also* letter from Oxfam-ERI.

[383] *See* letters from API 1; Chevron; and ExxonMobil 1.

[384] We note in this regard that the API did not reiterate its previous assertions that Angola and Cameroon have laws prohibiting the disclosure of payment information.

[385] *See* letters from Cleary and ExxonMobil 1.

[386] *See* letter from ExxonMobil 1.

[387] *See* letter from Cleary.

[388] *See* letters from ACEP; ACTIAM et al.; Bean; Calvert; Global Witness 1; Oxfam 1; PWYP–US 1; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; and USSIF.

[389] *See* letters from ACEP; Bean; Calvert; Global Witness 1; Oxfam 1; PWYP–US 1; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; and USSIF.

[390] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

A number of commenters made specific recommendations for the types of supporting documentation the rules should require from those seeking an exemption due to a foreign law prohibition on disclosure.[393] These commenters recommended requiring the text of the relevant law, a legal opinion identifying the conflicts with the disclosure rules, and a description of the steps taken by the issuer to obtain permission from the host country to disclose, such as waivers, exceptions, or exemptions. Some of these commenters also recommended requiring a description of the penalties or sanctions for violating the foreign legal provision, including information about whether the prohibition has been enforced in the past.[394] One of them also recommended requiring that the issuer provide the text of the foreign law and the legal opinion in English and also provide the date of enactment or promulgation of the foreign law or rule.[395]

3. Final Rules

While we continue to believe, for the reasons discussed below, that a case-by-case approach to providing exemptions under our existing authority is generally preferable in this context, we are also including a targeted exemption for payments related to exploratory activities.[396] We believe this exemption, as described and discussed below, should help mitigate any potential competitive harm that issuers might experience while not materially reducing the overall benefits of the disclosure to its users. To address any other potential bases for exemptive relief, beyond the exemptions for payments related to exploratory activities and recently acquired companies, issuers may apply for exemptions on a case-by-case basis using, as recommended by certain commenters,[397] the procedures set forth in Rule 0–12 of the Exchange Act.[398] This approach will allow the Commission to determine if and when exemptive relief may be warranted and how broadly it should apply, based on the specific facts and circumstances presented in the application.[399]

With respect to the request for a blanket exemption in countries where the law may prohibit the disclosure, however, we believe that there continues to be sufficient uncertainty in the record such that this approach is not necessary or appropriate at this time. For example, while the API initially identified four countries whose laws would prohibit Section 13(q) disclosures, its most recent comment letter listed only two of those countries as currently prohibiting such disclosures.[400] In addition, with respect to those two remaining countries, we note that several large resource extraction issuers have recently made payment disclosures related to those jurisdictions.[401] We think this state of uncertainty, which at a minimum raises questions about the existence and scope of disclosure prohibitions in these foreign jurisdictions, counsels against adoption of any blanket exemptions for foreign law conflicts at this time. Moreover, as more companies begin to report under the EU Directives and ESTMA, the existence of alleged conflicts between those disclosure regimes and foreign laws may be clarified prior to any reports being due under the rules we are adopting today.[402] This, along with the fact that issuers will have a two-year period before any reports are due under our rules in which to submit an exemptive application (along with appropriate supporting materials), further supports the conclusion that a case-by-case exemptive approach is preferable.

Separately, we also believe that the case-by-case exemptive approach is significantly less likely than a blanket approach to encourage foreign governments to enact laws prohibiting the Section 13(q) disclosures. A blanket exemption could lead a foreign government contemplating such a law to conclude that enactment of the law would have its intended effect of preventing the disclosures. With a case-by-case exemptive approach, however, that foreign government would not be able to reach that conclusion, as it would face a number of uncertainties concerning the potential results of enacting such a law. Specifically, the foreign government would not have any basis to assume that the Commission would grant exemptive relief, and, even if it did so, whether such relief would apply on a permanent basis or in a more limited fashion (such as a grandfathering provision or a time-limit to allow issuers to divest their interests in the country in an orderly manner). This uncertainty about whether the law would have its intended effect, in our view, should help to discourage foreign governments from adopting such a law. Relatedly, we note that one commentator opposed the case-by-case exemptive approach because of the uncertainty that it may cause issuers.[403] While we appreciate this concern, we believe that it is on balance outweighed by the countervailing considerations discussed above, and elsewhere in this release and the Proposing Release, which counsel against our adopting most of the blanket exemptions that commenters proposed.

With respect to the request for an exemption to prevent the disclosure of commercially sensitive information, we are persuaded that a targeted exemption for payments made in connection with exploratory activities, in line with commenters' suggestions, is appropriate.[404] Specifically, issuers will not be required to report payments related to exploratory activities in the Form SD for the fiscal year in which payments are made but can instead delay reporting such payments in the Form SD until the fiscal year following the fiscal year in which the payments were made. In this regard, we believe that the likelihood of competitive harm (in regards to a new discovery) from the disclosure of payment information related to exploratory activities diminishes over time starting from when the exploratory activities on the property or any adjacent property have begun.[405]

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[391] *See* letters from Bean and USSIF.

[392] *See* letter from Bean.

[393] *See* letters from ACEP; Bean; Global Witness 1; Oxfam 1; PWYP–US 1; Sen. Cardin et al. and Sen. Lugar et al.

[394] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[395] *See* letter from Bean.

[396] *See* Item 2.01(b) of Form SD. As discussed above in Section II.G.3, the final rules also include transitional relief for certain recently acquired companies.

[397] *See* letters from ACEP; Global Witness 1; Oxfam; and PWYP–US 1. *See also* note 388 and accompanying text.

[398] 17 CFR 240.0–12.

[399] For example, an issuer claiming that a foreign law prohibits the required payment disclosure under Section 13(q) will be able to make the case that it would suffer substantial commercial or financial harm if relief is not granted. An issuer could also apply for an exemption in situations where disclosure would conflict with the terms of a material preexisting contract, reveal commercially sensitive information not otherwise available to the public, or have a substantial likelihood of jeopardizing the safety of an issuer's personnel, among other possible bases for an exemption. The Commission could then determine the best approach to take based on the facts and circumstances, including denying an exemption, providing an individual exemption, providing a broader exemption for all issuers operating in a particular country, or providing some other appropriately tailored exemption. *See* letters from ACEP; ACTIAM et. al.; Bean; Calvert; Cleary; Oxfam 1; Oxfam-ERI; Petrobras; PWYP–US 1; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA and USSIF (each supporting a case-by-case exemptive approach, although some expressed a preference for not providing any exemptions).

[400] *See* letter from API 1.

[401] *See* note 299 above.

[402] For example, reports under the United Kingdom's implementation of the EU Directives will be due by November 2016 at the latest (with certain reports due by June 2016) covering payments made in fiscal 2015; and reports under Canada's ESTMA will be due for many issuers (*i.e.*, for those issuers with fiscal years ending December 31, 2016) in May 2017 covering payments made in 2016. Significantly, we note that several reports that already have been filed pursuant to the EU Directives have disclosed payments made to the governments of Angola, China, and Qatar, which commenters previously indicated prohibited such disclosure. *See* BHP Report (China); Shell Report (China and Qatar), Statoil Report (Angola); and Total Report (Angola, China, Qatar). *See also* note 302 above. As additional reports are filed, we expect to gain further insight into the permissibility and feasibility of disclosure in these and other jurisdictions.

[403] *See* letter from API 1 ("issuers need the certainty of knowing how the rule will affect them now").

For purposes of this exemption, we consider payments to be related to exploratory activities if they are made as part of the process of identifying areas that may warrant examination or examining specific areas that are considered to have prospects of containing oil and gas reserves, or as part of a mineral exploration program. In all cases, however, exploratory activities are limited to activities conducted prior to the development or extraction of the oil and gas or minerals that are the subject of the exploratory activities. Furthermore, this targeted exemption is not permitted for payments related to exploratory activities on the property or any adjacent property once the issuer has commenced development or extraction activities anywhere on the property, on any adjacent property, or on any property that is part of the same project.

In providing this exemption, we also considered the fact that the total payment streams from the first year of exploration that would be covered by the exemption should often be relatively small compared to, for example, the annual payment streams that would likely occur once an issuer commences development and production. Given this likelihood, we believe, on balance, that any diminished transparency as a result of the one-year delay in reporting of such payments that we are permitting is justified by the potential competitive harms that we anticipate may be avoided as a result of this exemptive relief. Nevertheless, we have limited the exemption to one year because we believe that the likelihood of competitive harm related to a new discovery from disclosing the payment information diminishes over time once exploratory activities on the property or any adjacent property have begun.[406]

Beyond these accommodations for exploratory activities and certain recently acquired companies, we are not persuaded that we should adopt exemptions for other purposes in the final rules. As a threshold matter, we note that many commenters advanced credible arguments challenging the claims raised by industry commenters for broad exemptive relief in these areas.[407] Further, we are mindful that global resource extraction payment transparency touches on a host of issues that are constantly changing and evolving and as such do not lend themselves to static exemptive regimes. In this regard, we note the enactment of significant transparency laws in major economic markets, the expanding implementation of the EITI, the increasing prevalence of voluntary payment disclosure, evolution in the terms typically included in agreements with host governments, and the constantly changing geopolitical security landscape.[408] As such, we believe that crafting exemptions that balance the transparency goals of Section 13(q) with the myriad concerns that could arise is best done through a flexible facts-and-circumstances based approach. Furthermore, although we have included only two targeted exemptions in the final rules, nothing prevents the Commission from using its existing exemptive authority to provide broader relief if the facts and circumstances should warrant such action in the future.[409]

A separate but related consideration is that developing objective criteria for exemptive relief for potential competitive harm (beyond the exploratory phase) or safety that could be uniformly applied would be difficult. In our view, issues related to such competitive and safety concerns are inherently case-specific, requiring an analysis of the underlying facts and circumstances. We are therefore concerned that adopting a broad exemption with respect to competitive concerns (beyond the exploratory phase) or safety concerns could result in issuers applying the exemption in an overly broad way. Specifically, the effective and appropriate utilization of broad exemptions in these areas would be dependent on the independent assessment and good faith implementation by issuers, potentially producing inconsistent application, if not overuse.[410] With a case-by-case exemptive approach, however, the Commission can ensure that exemptions are afforded only where the facts and circumstances warrant.

Finally, we are not persuaded that there is a need for an exemption in the final rules for contracts that may prohibit the disclosure. We note that various commenters opposing such an exemption provided evidence indicating that many contracts allow for disclosure of payment information where it is required by law.[411] Moreover, we

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[404] *See* letter from API 1 (asserting as an example of competitive harm payments to local governments in connection with "high-potential exploratory territory" and maintaining that case-by-case exemptions would be insufficient to protect against competitive harm in such situations).

[405] See note 406 below.

[406] We appreciate that the exploratory phase may vary from project to project, and that this variance can depend on such considerations as the geographic area in which the exploration is being undertaken and the type of resource being sought. In determining to provide a one-year reporting delay, we looked to considerations in the oil and gas industry in particular as oil and gas industry commenters asserted a specific need for the exemptive relief. We understand that the exploratory period for oil and gas generally involves a seismic survey/analysis phase followed by an exploratory drilling phase. We further understand that, while the time periods for those activities can vary considerably, conducting seismic surveys and analyzing the data can take six months or more, while (at least for conventional onshore hydrocarbons) exploratory drilling and site clearance can potentially take a similar length of time. These considerations lead us to believe that one year is an appropriate period for a delay in reporting exploratory payments.

[407] *See* Section II.I.2 above.

[408] We note in this regard that, in contrast to the 2012 Rules, commenters have not reiterated previous assertions that Cameroon and Angola prohibit the disclosure of resource extraction payments.

[409] *See* Section 36(a) of the Exchange Act (15 U.S.C. 78mm(a)). We contemplate relying on Section 36(a) and the application process set forth in Rule 0–12 as the principal means of considering exemptive relief from the requirements of the final rules, except that, where exigent circumstances warrant, the staff, acting pursuant to delegated authority from the Commission, may rely on Section 12(h) of the Exchange Act (15 U.S.C. 78*l*(h) for the limited purpose of providing interim relief while the Commission is considering a Section 36(a) exemptive application.

[410] *Cf. generally* letter from API 1 (noting potential difficulties when rule text is "susceptible to varying interpretations" among issuers).

[411] Several commenters provided persuasive evidence demonstrating that exceptions to confidentiality for laws or stock exchange requirements that require disclosure are frequently a standard component of oil, gas and mining contracts. *See* letter from PWYP–US 3. For instance, we understand that the Association of International Petroleum Negotiators (AIPN) has included this type of exception to confidentiality in its model contract used by its members for the last two decades. *See* letter from Oxfam America (Mar. 20, 2012) ("Oxfam 2 (pre-proposal)") (noting that the AIPN Model Form Confidentiality Agreement authorizes the disclosure of otherwise confidential information that is required "under applicable law, including by stock exchange regulations or by a governmental order, decree, regulation or rule."). Another commenter provided a database of over 800 contracts from 73 countries and reported that

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believe that the two-year period that we are providing issuers before the reporting obligation takes effect should allow most issuers a sufficient opportunity to obtain the necessary modifications to existing contracts so that they can make the required disclosures. With respect to any future contracts that issuers may enter, we anticipate that issuers can and should include express provisions permitting them to make the disclosures required under Section 13(q).

Commenters were also divided about whether the exemptive application process should be public (with notice and comment) or confidential. We agree that public input can be beneficial in understanding the complexities of the resource extraction industry. Accordingly, Rule 0–12 allows the Commission to provide notice in the **Federal Register** and to receive public comment on applications for exemptions when it deems such an approach appropriate. Notwithstanding our appreciation for public input, we also do not believe it is appropriate to require an issuer to reveal the very information it seeks to protect in order to apply for an exemption. In this regard, we note that although an applicant would need to describe the particular payment disclosure it seeks to omit and the specific facts and circumstances that warrant an exemption, it need not include specific payment amounts to support its application. We believe that in most cases the application could present sufficient information to describe the circumstances warranting an exemption and the corresponding harm without revealing the precise information that the issuer seeks to keep confidential. We also note that Rule 0–12 does allow applicants to request temporary confidential treatment to the extent provided under Rule 81,[412] which may further alleviate concerns by delaying public access to the exemptive application for up to 120 days from the time of the Commission's response. Further, issuers will be permitted to withdraw their application if it appears to the staff that the request for confidential treatment should be denied, in which case the application would remain in the Commission's files but would not be made public.[413]

Finally, we note that Rule 0–12 requires an application to be made in writing, including "any supporting documents necessary to make the application complete." Commenters were divided on whether the Commission should require certain specified documentation as part of the application or whether we should follow a more flexible, non-prescriptive approach, where the registrant would initially determine what supporting information is appropriate. We believe a non-prescriptive, flexible process is more appropriate given that we are adopting a case-by-case approach to exemptions that is driven by particular facts and circumstances. We do note, however, that the Commission, through the Division of Corporation Finance, may request, as appropriate, supporting documentation such as a legal opinion, the text of applicable foreign laws (translated as necessary), representations as to the public availability of the information in question, or a description of the steps taken by the issuer to obtain permission to disclose.[414] Failure to provide such information upon request could cause the application to be deemed incomplete or denied. We note that, as with any exemptive application, the burden is on the applicant to demonstrate that such relief is necessary and appropriate in the public interest.

J. Alternative Reporting

1. Proposed Rules

As noted in the Proposing Release, several jurisdictions have implemented resource extraction payment disclosure laws since the 2012 Rules.[415] Around the time of the Proposing Release, the USEITI also published its first report.[416] In light of these developments and with a view towards reducing compliance costs, we proposed a provision that would allow issuers to meet the requirements of the proposed rules by providing disclosure that complies with a foreign jurisdiction's rules or that meets the USEITI's reporting requirements, if the Commission has determined that those rules or requirements are substantially similar to the rules adopted under Section 13(q).[417] The Proposing Release contemplated that the Commission would be able to make a determination about the similarity of a foreign jurisdiction's or the USEITI's disclosure requirements either unilaterally or pursuant to an application submitted by an issuer, jurisdiction, or other party.[418]

We proposed requiring resource extraction issuers to file the substantially similar report as an exhibit to Form SD with a statement in the body of its filing that it was relying on the accommodation and identifying the alternative reporting regime for which the report was prepared (*e.g.*, a foreign jurisdiction or the USEITI).

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on whether we should include an alternative reporting process that would allow for an issuer that is subject to the reporting requirements of a foreign jurisdiction or the USEITI to submit those reports in satisfaction of our requirements. In addition, we solicited comment on whether a "substantially similar" standard was appropriate and which criteria should apply when evaluating the similarity of another jurisdiction's reporting requirements. We also solicited comment on various aspects of the procedures surrounding an alternative reporting process, such as whether the Commission should unilaterally make the determination, what types of parties should be allowed to submit an application for alternative reporting, what supporting evidence should be required, and what application procedures should be implemented. For example, we requested comment on whether Exchange Act Rule 0–13 would provide appropriate procedures for requesting alternative reporting. We also solicited comment on whether the Commission should recognize certain foreign reporting requirements or the USEITI reporting framework as substantially similar when the final rule is adopted.

All of the commenters that addressed this aspect of the Proposing Release supported the concept of alternative reporting in some form.[419] Despite general support, several commenters recommended using a standard different from "substantially similar," such as "equivalent,"[420] "substantially equivalent,"[421] "broadly similar,"[422] or

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over half of the contracts in the database explicitly allow for disclosure when required by law. *See* letter from OpenOil UG (Oct. 26, 2015) ("OpenOil (pre-proposal)").

[412] 17 CFR 200.81.

[413] 17 CFR 200.81(b). The information could be subject to a request made pursuant to the Freedom Of Information Act (FOIA). In this regard, however, we note that FOIA provides an exemption from public release for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." See 5 U.S.C. 552(b)(4).

[414] *See* Rule 0–12(a), (f) [17 CFR 240.0–12(a), (f)].

[415] *See* Section I.C above.

[416] *See* note 87 above.

[417] Proposed Item 2.01(b) of Form SD.

[418] *See* Proposing Release, Section II.G.4.

[419] *See* letters from ACEP; ACTIAM et al.; API 1; Bean; BHP; BP; Calvert; Chevron; Cleary; Department of Interior; Encana; ExxonMobil 1; Global Witness 1; Oxfam 1; PWYP–US 1; RDS; Ropes & Gray; Sen. Cardin et al.; Sen. Lugar et al.; and Total.

[420] *See* letter from Cleary.

[421] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[422] *See* letter from BP.

"broadly comparable."[423] Several commenters also recommended criteria that the Commission should focus on when assessing the similarity of other regimes. For example, one commenter recommended using the two criteria set forth in Canada's substitution policy.[424] A variety of other recommendations were made by other commenters, such as comparing (1) the types of payments that are required to be disclosed; (2) the types of payment recipients (including subnational governments and entities controlled by the government); (3) whether project-level disclosure is required and, if so, the definition of "project;" (4) whether the disclosure must be publicly filed and whether it includes the identity of the issuer; (5) whether subsidiaries under the control of and consolidated by the issuer are reported; (6) the threshold for de minimis payments; (7) whether the disclosure must be provided using an interactive data format that includes electronic tags; (8) the availability of exemptions from reporting; (9) frequency of reporting; (10) anti-evasion measures; and (11) the availability of liability or penalties for violations of the disclosure requirements.[425]

One commenter recommended that the Commission not require issuers to convert data into a different interactive data format as a condition to alternative reporting.[426] Another commenter recommended that the EU Directives and ESTMA be deemed substantially similar requirements despite not requiring inclusion of a tag for the particular resource subject to commercial development.[427]

Other commenters made specific recommendations on the procedures that the Commission should follow when making an alternative reporting determination. For example, several commenters supported using the procedures set forth in Exchange Act Rule 0–13,[428] while other commenters supported a less prescriptive approach.[429] A few commenters also recommended allowing issuers, foreign jurisdictions, and industry groups to submit applications supporting the substantial similarity of other jurisdictions' requirements.[430]

A number of commenters called for the Commission to recognize substantially similar alternative reporting regimes in the adopting release.[431] Most of those commenters recommended recognizing the EU Directives[432] and/or Canada.[433] Commenters also recommended the UK specifically[434] or Norway.[435] The Department of Interior recommended allowing for alternative reporting under the USEITI, with several other commenters supporting that recommendation.[436]

3. Final Rules

a. Requirements for Alternative Reports

We are adopting an alternative reporting mechanism similar to what we proposed whereby issuers will be able to meet the requirements of the final rules by providing disclosure that complies with a foreign jurisdiction's or the USEITI's resource extraction payment disclosure requirements if they are deemed "substantially similar" by the Commission.[437] As noted above, commenters broadly supported the concept of alternative reporting despite differing opinions on how it should be applied. The framework for alternative reporting in the final rules allows a resource extraction issuer that has already prepared a report pursuant to "substantially similar" requirements to avoid costs associated with having to prepare a separate report meeting the requirements of our disclosure rules.[438] We are adopting the proposed "substantially similar" standard because we are not persuaded that the alternative standards recommended by commenters would allow the Commission to evaluate better whether a regime requires sufficient disclosure to serve the underlying goals of Section 13(q) while also avoiding unnecessary costs.[439]

We note that the alternative reporting provision is generally consistent with the approach taken in the EU Directives and ESTMA and should promote international transparency efforts by incentivizing foreign countries that are considering adoption of resource extraction payment disclosure laws to provide a level of disclosure that is consistent with our rules and the other major international transparency regimes. Under the final rules, an issuer may only use an alternative report for an approved foreign jurisdiction or regime if the issuer is subject to the resource extraction payment disclosure requirements of that jurisdiction or regime and has made the report prepared in accordance with that jurisdiction's requirements publicly available prior to filing it with the Commission.[440] An issuer choosing to avail itself of this accommodation must submit as an exhibit to Form SD the same report that it previously made publicly available in accordance with the approved alternative jurisdiction's requirements.[441] The issuer must include a statement in the body of Form SD that it is relying on this accommodation and identifying the alternative reporting regime for which the report was prepared.[442]

In addition, the alternative reports must be tagged using XBRL.[443] Although a commenter recommended not requiring issuers to convert data into a different interactive data format to qualify for alternative reporting,[444] we believe that requiring a consistent data format for all reports filed with the Commission will improve the usefulness of the compilations created by the Commission and will enhance the ability of users to create their own up-to-date compilations in real time. We also do not believe that this requirement will add significantly to the costs of alternative reporting given that most of these costs are associated with collecting the required information, not the particular data format.

An issuer relying on the alternative reporting accommodation must also provide a fair and accurate English translation of the entire report if prepared in a foreign language.[445] Project names may be presented in their original language in addition to the English translation of the project name if the issuer believes such an approach would facilitate identification of the project by users of the disclosure.[446]

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[423] *Id.*

[424] *See* letter from Cleary. For a discussion of Canada's substitution policy, *see* Section I.C.2 above.

[425] No one commenter recommended all of these factors. *See, e.g.,* letters from PWYP–US 1 and Encana.

[426] *See* letter from BHP.

[427] *See* letter from Encana.

[428] *See* letters from Calvert and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[429] *See* letters from Cleary and Ropes & Gray.

[430] *See* letters from Cleary and Ropes & Gray.

[431] *See* letters from ACEP; BHP; BP; Cleary; Encana; Global Witness 1; Oxfam 1; PWYP–US 1; RDS; Ropes & Gray; and Total.

[432] *See* letters from ACEP; BHP (recommending recognizing the EU's reporting system for a finite period of five years); BP; Cleary; Encana; Global Witness 1; Oxfam 1; PWYP–US 1; and Total.

[433] *See* letters from Cleary; Encana; and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[434] *See* letters from BP; Cleary; and RDS. The letters from BP and Cleary also recommended the European Union more generally.

[435] *See* letters from Cleary and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[436] *See* letters from BP; Calvert; and PWYP–US 1.

[437] *See* Item 2.01(c) of Form SD.

[438] *See* Section III.C.2 below for a discussion of these costs.

[439] *See* notes 420–423 above and accompanying text.

[440] *See* Item 2.01(c)(1)–(2) of Form SD.

[441] *See* Item 2.01(c)(2). The format of the report may differ to the extent necessary due to the conditions placed by the Commission on the alternative reporting accommodation. *See id.* For example, the report may not have been originally submitted in the home jurisdiction in XBRL or may not have been in English.

[442] *See* Item 2.01(c)(3) of Form SD.

[443] *See* Item 2.01(c)(4) of Form SD.

[444] *See* letter from BHP.

As noted in the Proposing Release, the "substantially similar" standard would not require the alternative reporting regime to be equivalent or identical. Under the final rules, the Commission could consider the following criteria, among others, to make its determination that another reporting regime is substantially similar: (1) The types of activities that trigger disclosure; (2) the types of payments that are required to be disclosed; (3) whether project-level disclosure is required and, if so, the definition of "project;" (4) whether the disclosure must be publicly filed and whether it includes the identity of the issuer; and (5) whether the disclosure must be provided using an interactive data format that includes electronic tags. When considering whether to allow alternative reporting based on a foreign jurisdiction's reporting requirements, the Commission will likely also consider whether disclosure of payments to subnational governments is required and whether there are any exemptions allowed and, if so, whether there are any conditions that would limit the grant or scope of the exemptions. This non-exclusive list of factors does not preclude the Commission from considering other factors, such as those recommended in the comments described above.[447]

As discussed above in Section I.C.2, Canada allows for substituted reports to be filed according to the approved substitute jurisdiction's deadline if the Department of Natural Resources Canada is notified by email prior to the expiration of ESTMA's 150 day deadline.[448] In light of the requirement in the final rules that the alternative report be publicly available in the alternative jurisdiction prior to the submission of the alternative report to the Commission, we believe that an approach similar to Canada's will increase the usefulness of the alternative reporting accommodation.[449] Therefore, an issuer filing an alternative report prepared pursuant to foreign reporting regimes recognized by the Commission as substantially similar may follow the reporting deadline in the alternative jurisdiction.[450] To do so, however, it must submit a notice on Form SD–N on or before the due date of its Form SD indicating its intent to submit the alternative report using the alternative jurisdiction's deadline.[451] To deter abuse of this accommodation, the final rules provide that if an issuer fails to submit such notice on a timely basis, or submits such a notice but fails to submit the alternative report within two business days of the alternative jurisdiction's deadline, it will become ineligible for the alternative reporting accommodation for the following fiscal year.[452]

b. Recognition of EU Directives, Canada's ESTMA, and the USEITI as Alternative Reporting Regimes

In conjunction with our adoption of the final rules, we are issuing an order recognizing the EU Directives, Canada's ESTMA, and the USEITI in their current forms as substantially similar disclosure regimes for purposes of alternative reporting under the final rules, subject to certain conditions. We have determined that these three disclosure regimes are substantially similar to the final rules.[453] For example, all three regimes require annual, public disclosure, including the identity of the filer; do not provide for any blanket exemptions; include the same or similar activities when defining commercial development of oil, natural gas, or minerals; require project-level reporting at the contract level (or in the case of the USEITI, calls for project-level reporting consistent with the European Union and Commission definitions of "project"); cover similar payment types; cover similar controlled entities and subsidiaries; and require foreign subnational payee reporting. Although we acknowledge differences between these regimes and the final rules, we do not believe that such differences, as identified and discussed above,[454] support reaching a different conclusion, particularly in light of the requirements we are imposing on alternative reporting.[455] We note that, among those commenters who addressed the issue, there was agreement that the Commission should allow alternative reporting under the EU Directives, Canada's ESTMA, and the USEITI.[456] This further persuades us that it is appropriate at this time to grant these three regimes alterative reporting status in their current form.

Although we are recognizing the USEITI's requirements as substantially similar, we are mindful of the more limited scope of those requirements. For example, the USEITI does not cover payments to foreign governments and currently uses calendar year reporting instead of fiscal year reporting.[457] Due to these limitations, as set forth in the accompanying order, USEITI reports will only satisfy the disclosure requirements in Rule 13q–1 for payments made by an issuer to the

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[445] *See* Item 2.01(c)(5) of Form SD. Rule 306 of Regulation S–T (17 CFR 232.306) requires that all electronic filings and submissions be in the English language. If a filing or submission requires the inclusion of a foreign language document, Rule 306 requires that the document be translated into English in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) or Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)). Both of these rules require the submission of a fair and accurate English translation of an entire foreign language document that is being submitted as an exhibit or attachment if the document consists of certain specified material. If the foreign language document does not consist of such material, and the form permits it, a fair and accurate English language summary may be provided in lieu of an English translation. Given the level of specificity of the disclosure and the electronic tagging required under Rule 13q–1 and Form SD, we do not believe it would be appropriate to permit an English summary of a foreign language document that is being provided as an alternative report. We have therefore added a requirement to Form SD requiring a registrant to provide a fair and accurate English translation of the entire foreign language document being submitted as an exhibit to Form SD pursuant to the alternative reporting provision.

[446] *See* Item 2.01(c)(5) of Form SD.

[447] *See* Section II.J.2 above.

[448] *See* note 80–81 above and accompanying text.

[449] Although Canada uses the same 150 day deadline as the final rules, the EU Directives leave the annual deadline to the discretion of the member states. *See* note 56 above and accompanying text.

[450] *See* Item 2.01(c)(6) of Form SD.

[451] *See* Item 2.01(c) of Form SD.

[452] *Id.*

[453] For a lengthier discussion of significant aspects of these regimes, see Section I.C above.

[454] *See* Section II.C.3 above (discussing variations in the treatment of CSR payments under the final rules, the EU Directives, and ESTMA) and Section II.E.3 above (discussing when multiple agreements may be aggregated as a single project under the final rules and how that differs from the approach used by the EU Directives and the ESTMA Specifications). We recognize that our decision to include CSR payments within the list of payment types specifically covered by the final rules reflects a difference from how CSR payments are treated under the European Union and Canadian disclosure regimes. On balance, considering the benefits to users and issuers from permitting alternative reporting and the fact that the recent trend has been toward inclusion of such payments (the EITI revised its standard to include CSR payments after the EU and Canadian disclosure standards were developed), we do not feel this difference should prevent us from recognizing the EU Directives and ESTMA as "substantially similar" reporting regimes at this time. In weighing whether to recognize these reporting regimes as substantially similar, we also have considered that several companies reporting under these regimes may provide disclosure about CSR payments. *See* Section II.C.3 above. Furthermore, the ESTMA Guidance indicates that CSR payments disclosure may be required in Canada in certain circumstances, despite not being specifically listed as a covered payment type. *See* note 212 and accompanying text.

[455] For example, the final rules require alternative reports to be submitted in XBRL format. *See* Section II.J.3.a above.

[456] *See* letters from ACEP; BHP (recommending recognizing the EU's reporting system for a finite period of five years); BP; Calvert; Cleary; Encana; Global Witness 1; Oxfam 1; PWYP–US 1; and Total.

[457] *See* Section I.C.3 above.

Federal Government, not to foreign governments. An issuer will have to supplement its USEITI report by disclosing in its Form SD all payment information to foreign governments required by the final rules. In addition, the issuer may need to supplement its USEITI report so that the required payment information is provided on a fiscal year basis.[458] We note that the requirement to provide fiscal year reporting will have limited impact on issuers with a December 31 fiscal year end. In this regard, the Department of Interior has stated that "many" U.S. EITI reporting companies use the calendar year as their fiscal year.[459]

c. Application Procedures

With respect to applications to request recognition of other jurisdictions' payment transparency rules as substantially similar, applicants should follow the procedures set forth in Rule 0–13 of the Exchange Act, which permits an application to be filed with the Commission to request a "substituted compliance order" under the Exchange Act. Although applicants should follow the procedures set forth in Rule 0–13(b) through (i), applications may be submitted by issuers, governments, industry groups, and trade associations.[460] The application must include supporting documents and will be referred to the Commission's staff for review. The Commission must publish a notice in the **Federal Register** that a complete application has been submitted and allow for public comment. The Commission may also, in its sole discretion, schedule a hearing before the Commission on the matter addressed by the application.

K. Exhibits and Interactive Data Format Requirements

1. Proposed Rules

The proposed rules required a resource extraction issuer to file the required disclosure on EDGAR in an XBRL exhibit to Form SD. Consistent with Section 13(q), the proposed rules required issuers to submit the payment information using electronic tags—a taxonomy of defined reporting elements—that identify, for any payment required to be disclosed:

- The total amounts of the payments, by category;[461]
- the currency used to make the payments;
- the financial period in which the payments were made;
- the business segment of the resource extraction issuer that made the payments;
- the government that received the payments and the country in which the government is located; and
- the project of the resource extraction issuer to which the payments relate.[462]

In addition to the electronic tags specifically required by the statute, we proposed requiring issuers to provide and tag:

- The type and total amount of payments made for each project,
- the type and total amount of payments for all projects made to each government;
- the particular resource that is the subject of commercial development, and
- the subnational geographic location of the project.

For purposes of identifying the subnational geographic location of the project, we proposed an instruction specifying that issuers must provide information regarding the location of the project that is sufficiently detailed to permit a reasonable user of the information to identify the project's specific, subnational location.[463] We stated that, depending on the facts and circumstances, this could include the name of the subnational governmental jurisdiction(s) (*e.g.*, state, province, county, district, municipality, territory, etc.) or the commonly recognized subnational geographic or geologic location (*e.g.*, oil field, basin, canyon, delta, desert, mountain, etc.) where the project is located, or both. We anticipated that more than one descriptive term would likely be necessary when there are multiple projects in close proximity to each other or when a project does not reasonably fit within a commonly recognized, subnational geographic location. We also stated that when considering the appropriate level of detail, issuers may need to consider how the relevant contract identifies the location of the project.[464]

We also proposed an instruction to Form SD that would have required issuers to report the amount of payments made for each payment type and the total amount of payments made for each project and to each government in U.S. dollars or in the issuer's reporting currency if not U.S. dollars.[465] The proposed rules allowed a resource extraction issuer to calculate the currency conversion in one of three ways: (1) By translating the expenses at the exchange rate existing at the time the payment is made; (2) by using a weighted average of the exchange rates during the period; or (3) based on the exchange rate as of the issuer's fiscal year end.[466] A resource extraction issuer was also required to disclose the method used to calculate the currency conversion.[467]

Consistent with the statute, the proposed rules required a resource extraction issuer to include an electronic tag that identified the business segment of the resource extraction issuer that made the payments. We proposed defining "business segment" as the reportable segments used by the resource extraction issuer for purposes of financial reporting.[468]

We also proposed that to the extent payments, such as corporate income taxes and dividends, are made for obligations levied at the entity level, issuers could omit certain tags that may be inapplicable (*e.g.*, project tag, business segment tag) for those payment types as long as they provide all other electronic tags, including the tag identifying the recipient government.[469]

Finally, we noted that Section 13(q)(3) directs the Commission, to the extent practicable, to provide a compilation of the disclosure made by resource extraction issuers. To satisfy this requirement, the proposed rules required the disclosures to be filed on EDGAR in an XBRL exhibit, which would allow the data to be searched and extracted by users.

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on a variety of matters related to the format of the disclosure, the proposed tags, and the related

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[458] For example, in addition to covering any gaps between the calendar year and fiscal year, the issuer will need to disclose any series of payments that exceeded the de minimis threshold on a fiscal year basis rather than on a calendar year basis. *See* Section II.C above for a discussion of the de minimis threshold.

[459] *See* letter from Department of Interior.

[460] *See* Rule 13q–1(c).

[461] For example, categories of payments could be bonuses, taxes, or fees.

[462] *See* proposed Item 2.01(a) of Form SD.

[463] *See* proposed Instruction 3 to Item 2.01 of Form SD.

[464] *See id.*

[465] *See* proposed Instruction 2 to Item 2.01 of Form SD. Currently, foreign private issuers may present their financial statements in a currency other than U.S. dollars for purposes of Securities Act registration and Exchange Act registration and reporting. *See* Rule 3–20 of Regulation S–X [17 CFR 210.3–20].

[466] *See* proposed Instruction 2 to Item 2.01 of Form SD.

[467] *See id.*

[468] *See* proposed Item 2.01(c)(1) of Form SD. The term "reportable segment" is defined in FASB ASC Topic 280, *Segment Reporting*, and IFRS 8, *Operating Segments*.

[469] *See* 2012 Adopting Release, n.432 and accompanying text.

instructions. For example, we asked how the total amount of payments should be reported when payments are made in multiple currencies and whether the three proposed methods for calculating the currency conversion described above provide issuers with sufficient options to address any possible concerns about compliance costs, the comparability of the disclosure among issuers, or other factors. We also asked whether XBRL is the most suitable interactive data standard, whether "business segment" should be defined differently, and whether the non-statutory tags we proposed were appropriate. In addition, we requested comment on whether the proposed "reasonable user" approach to describing the geographic location of the project provided sufficient detail to users of the disclosure when combined with the other tagged information. Finally, we solicited comment on whether the proposed approach to making a compilation available was consistent with Section 13(q)(3) or whether a different compilation would be necessary.

All of the commenters that addressed the proposed interactive data format supported using XBRL.[470] One of them generally recommended that the rules provide issuers with the flexibility to present information in either the body of the Form SD or on an exhibit, as well as the flexibility to decide whether to summarize or include selected information contained in the exhibit in the base Form SD.[471]

One commenter specifically supported the proposed approach to describing the geographic location of projects.[472] Another commenter recommended that, rather than relying on the concept of "a reasonable user," the rules require geographic locations to be disclosed as specified in the agreement or multiple agreements which have been used to establish the project for reporting purposes.[473] By contrast, the commenters that supported the API Proposal disagreed with tagging the geographic location of the project at a level below the largest subnational political jurisdiction.[474] As described above, those commenters recommended using ISO codes to standardize geographic location tagging down to the first subnational geographic level.[475]

Several commenters requested changes or clarifications to the data tagging requirements.[476] One of them recommended defining "business segment" to mean the subsidiary or other entity under the control of the issuer that makes payments to a government because that entity often has a different name from the parent issuer that is reporting to the Commission.[477] This commenter stated that providing the name of the entity making the payment would aid accountability and provide users with the means to follow up locally when compared to the Commission's proposed approach of defining "business segment" as a reportable segment used for purposes of financial reporting. Other commenters disagreed with this suggestion believing that it was outside the scope of the statute.[478]

Another commenter, noting our guidance on entity-level disclosure, requested clarification of whether it could omit the project tag with respect to its export activities, which it stated were not project-specific.[479] Another commenter was unclear on whether the tag for the "particular resource that is the subject of commercial development" should be assigned to each project or whether it should be assigned to each government payee.[480] This commenter recommended that, if the particular resource must be disclosed, the tag should be associated with a project rather than a government payee. This commenter also noted that the proposed rules did not specify the level of granularity at which the "particular resource" must be disclosed.[481] This commenter also had concerns that reporting payments at a particular resource level would pose challenges for some issuers as development projects often target more than one resource as the subject of development and not all payments to a government payee are determined or dependent on a particular resource (*i.e.*, property taxes).

Another commenter recommended adopting the AICPA Audit Data Standards within the new XBRL taxonomy. This commenter stated that using these standards would enable issuers and their auditors to share "business operational, business and accounting data," creating potential cost savings by reducing duplicative data standards used by issuers and thereby leveraging the cost of complying with the rule for a range of purposes including internal and external use in the audit function.[482]

Another commenter recommended incorporating in EDGAR robust validation of the data submitted in the XBRL exhibits for both technical structure as well as content.[483] This commenter stated that doing so would ensure that the information provided to users is accurate and reliable. This commenter also recommended publishing the data as a set of CSV files to simplify automated analysis for some users, similar to what the Commission does for XBRL financial data. Generally this commenter thought that the Commission should seek input on the draft taxonomy through a public review and comment process prior to implementing the reporting requirements. Noting our statement in the Proposing Release that Inline XBRL[484] was another possible alternative for providing the information in interactive data format, the commenter questioned whether Inline XBRL would improve the usability of the data, or whether it merely adds an additional burden on filers to convert their data to HTML as well as XBRL.

One commenter stated that the three proposed methods for calculating the currency conversion when payments are made in multiple currencies provides issuers with sufficient options to address any possible concerns about compliance costs and comparability of the disclosure among issuers.[485]

Finally, several commenters specifically supported the proposed approach as meeting the statutory requirements to provide a compilation.[486] Other commenters stated that the proposed approach abandons the Commission's statutory obligation to create a compilation.[487] We discuss our approach to providing a compilation in Section II.H.3 above.

3. Final Rules

We are adopting the proposed requirements regarding interactive data exhibits and tagging with limited modifications. The approach we are adopting today provides the disclosure elements in a machine readable (electronically-tagged) XBRL format that should enable users to search, extract, aggregate, and analyze the information in a manner that is most useful to them. As we discussed in the Proposing Release, this approach will allow the information received from issuers to be converted by EDGAR and other commonly used software and services into an easily-readable tabular format.[488] The final rules do not require Inline XBRL. Given the nature of the disclosure required by the final rules, which is primarily an exhibit with tabular data, we do not believe that Inline XBRL would improve the usefulness or presentation of the required disclosure. As noted above, commenters supported using XBRL as the interactive data format but did not similarly support Inline XBRL, with one commenter specifically questioning its usefulness in this context. Unlike the comments we received on the 2010 Proposing Release, none of commenters on the Proposing Release recommended that the Commission allow issuers to use an interactive data format of their preference.[489]

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[470] *See* letters from AICPA; PWYP–US 1; and XBRL US.

[471] *See* letter from Ropes & Gray.

[472] *See* letter from Department of Interior.

[473] *See* letter from PWYP–US 1.

[474] *See* Section III.E. above.

[475] *Id.*

[476] *See* letters from AICPA; Encana; Petrobras; PWYP–US 1; and XBRL US.

[477] *See* letter from PWYP–US 1.

[478] *See* letters from ExxonMobil 2 and Petrobras.

[479] *See* letter from Petrobras.

[480] *See* letter from Encana.

[481] For example, this commenter sought clarification of whether the "particular resource" disclosure should be the primary resource targeted, such as oil, natural gas, or natural gas liquids, or if it should be the resource product types, such as coal bed methane, natural gas liquids, bitumen, heavy oil, light crude oil, and natural gas excluding natural gas liquids.

[482] *See* letter from AICPA.

[483] *See* letter from XBRL US.

[484] Inline XBRL would allow registrants to file the required information and data tags in one document rather than requiring a separate exhibit for the interactive data.

[485] *See* letter from Petrobras.

[486] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[487] *See* letters from API 1; Chevron; ExxonMobil 1.

Commenters were divided on how issuers should tag the subnational geographic location of the project.[490] On the one hand, those supporting the API Proposal favored using the first order subnational geographic location. Some of those commenters recommended using ISO codes to standardize references to those subnational geographic locations. These commenters were generally concerned that the proposed method for describing the location of a project would cause confusion and could potentially reduce transparency. On the other hand, many other commenters, including those expressing the greatest interest in using the disclosure to further the transparency goals of the statute, disagreed with an approach that would only disclose the geographic location of a project at the highest level of political organization below the national level. For the reasons discussed in Section II.E.3 above, we agree with the latter commenters that additional granularity is needed to accomplish the goals underlying Section 13(q). Nevertheless, we are sympathetic to the concern that differing descriptions of a project's location might make it more difficult to sort the data compiled in EDGAR. For this reason, we believe it is appropriate to add an additional tag for the subnational geographic location that uses the ISO codes suggested by commenters.[491] In this way, users of the disclosure would be able to sort the data in the more generalized fashion that industry commenters, such as the API, said would be more useful while also having access to the more specific data that many civil society organizations have supported. With respect to the suggestion of one commenter to use the geographic locations disclosed in the agreement(s) associated with a project, we believe the proposed approach accomplishes the same purpose while providing the issuer additional flexibility.[492]

With respect to the requirement to provide and tag the type and total amount of payments made for each project and to each government, we are adopting the three currency conversion methods as proposed.[493] As discussed above, the one commenter that addressed these methods thought that the options that were provided were sufficient to address concerns about compliance costs and comparability of disclosure.[494] Nevertheless, to avoid confusion, we are requiring that an issuer must choose a consistent method for all such currency conversions within a particular Form SD filing.[495]

With respect to the required business segment tag, despite the concerns of one commenter, we are adopting the proposed definition of "business segment." [496] We believe defining business segment in a manner consistent with the reportable segments used by resource extraction issuers for purposes of financial reporting provides sufficient granularity when combined with the detailed geographic and project-level information required to be disclosed by the final rules. In addition, the proposed approach would have cost advantages by aligning the disclosure requirements with the issuer's existing financial reporting systems and procedures.

L. Treatment for Purposes of Securities Act and Exchange Act

1. Proposed Rules

The statutory language of Section 13(q) does not specify that the information about resource extraction payments must be "filed." Rather, it states that the information must be "include[d] in an annual report[.]" [497] The proposed rules required resource extraction issuers to file, rather than furnish, the payment information on Form SD.

2. Comments on the Proposed Rules

In the Proposing Release we solicited comment on whether the payment disclosure should be filed or furnished. We also asked whether certain officers, such as the resource extraction issuer's principal executive officer, principal financial officer, or principal accounting officer, should certify the Form SD filing's compliance with the requirements of Section 13(q) of the Exchange Act or that the filing fairly presents the information required to be disclosed under Rule 13q–1.[498]

Commenters were divided on whether the disclosure should be filed as proposed, thus incurring Section 18 liability, or whether it should be furnished.[499] The commenters supporting the proposed approach stated that requiring the disclosure to be filed would ensure that it could be used reliably for investment analysis and for other purposes.[500] The commenters that recommended allowing the disclosure to be furnished stated that the rules were not material to the "vast majority of investors" and that users of the data did not need the level of protection associated with Section 18 liability.[501] These commenters expressed concern about the costs issuers might incur from Section 18 liability.

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[488] The use of XBRL will allow the Commission to improve the quality and usefulness of the data compilation on EDGAR by including data validation measures to improve data quality. Given the disbursement ledger nature of the Resource Extraction data, using existing disbursement taxonomies would be relevant both for minimizing implementation costs and also potentially enhancing the reusability by different consumers (*e.g.*, management, internal auditors, external auditors, regulators). The AICPA Audit Data Standards include disbursement ledger taxonomies and thereby may be useful in this effort.

[489] *See* Section II.G.5 of the Proposing Release.

[490] Commenters were also divided on how to name the project for the "project of the resource extraction issuer to which the payments relate" tag. We address issues relating to the definition of "project" in Section II.E. above.

[491] Similarly, to enhance comparability, we are requiring issuers to use the ISO 3166 code, if available, to identify the country in which a payee government is located. *See* Instruction 3 to Item 2.01 of Form SD.

[492] *See* letter from PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[493] *See* Instruction 2 to Item 2.01 of Form SD.

[494] *See* letter from Petrobras.

[495] *See* Instruction 2 to Item 2.01 of Form SD.

[496] *See* letter from PWYP–US 1 (recommending defining "business segment" as the subsidiary or entity under the control of the issuer that makes payments to a government because that would aid accountability and facilitate local follow-up by data users). *See also* proposed Item 2.01(c)(1) of Form SD.

[497] 15 U.S.C. 78m(q)(2)(A).

[498] We address responses to this request for comment and a similar one in Section II.G. above.

[499] For those in favor of filing, see letters from Bean; PWYP–US 1; TI–USA; and USSIF. For those in favor of furnishing, see letters from API 1; Chevron; Encana; and ExxonMobil 1.

[500] *See, e.g.*, letter from PWYP–US 1.

[501] *See, e.g.*, letter from API 1.

One commenter recommended allowing foreign private issuers to furnish Form SD,[502] while another commenter made a similar recommendation for foreign private issuers that are providing alternative reports.[503] The latter commenter pointed to other instances where foreign private issuers have been permitted to furnish reports and noted that the antifraud provisions of the Exchange Act would still apply. This commenter also stated that the courts in home jurisdictions would be better suited to interpret the laws governing the alternate report.

Another commenter recommended that to the extent an issuer wishes to include additional, voluntary disclosures in its Form SD, it should be permitted to furnish rather than file that information.[504] This commenter noted that many issuers avoid making elective disclosures in Commission filings due to liability concerns and that issuers could indicate what disclosure is being furnished under a separate heading or using other explanatory text.

3. Final Rules

The rules we are adopting today require the disclosure to be filed on Form SD. Section 13(q) does not state how the information should be submitted and instead leaves that question to the Commission to determine. We believe that the Form SD disclosure, including any voluntary disclosure, will benefit from potential Section 18 liability by providing issuers with further incentive to submit complete and accurate information. Although several commenters argued that the information is not material to investors and should therefore be furnished, we note that other commenters, including a number of large institutional investors who have expressed an intention to use the Section 13(q) disclosures, continue to argue that the information is material or important to investors.[505] Given this disagreement, and that materiality is a fact specific inquiry, we are not persuaded that this is a reason to permit the information to be furnished. While we are mindful of the costs associated with Section 18 liability, as we noted in the Proposing Release, Section 18 does not create strict liability for filed information.[506] Rather, it states that a person shall not be liable for misleading statements in a filed document if such person can establish that he or she acted in good faith and had no knowledge that the statement was false or misleading.[507]

Although a commenter stated that in certain other contexts issuers may furnish, rather than file, disclosure prepared in accordance with a foreign jurisdiction's requirements, we note that the disclosure furnished on Form 6–K, such as quarterly reports, is not required by the Commission's reporting requirements.[508] Instead, such reports need only be furnished when they are made or required to be made public in such issuer's home jurisdiction. Foreign private issuers must file, and are not permitted to furnish, reports required by the Commission's rules, such as annual reports on Form 20–F and Form 40–F, and Form 6–K reports that have been specifically incorporated by reference into a Securities Act registration statement.

M. Compliance Date

1. Proposed Rules

Section 13(q) provides that, with respect to each resource extraction issuer, the final rules issued under that section shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the issuer's fiscal year that ends not earlier than one year after the date on which the Commission issues the final rules under Section 13(q).[509] We proposed requiring resource extraction issuers to comply with Rule 13q–1 and Form SD for fiscal years ending no earlier than one year after the effective date of the adopted rules.[510] We also proposed selecting a specific compliance date that corresponds to the end of the nearest calendar quarter following the effective date, such as March 31, June 30, September 30, or December 31.[511]

2. Comments on the Proposed Rules

In the Proposing Release we asked whether we should provide a compliance date linked to the end of the nearest commonly used quarterly period following the effective date or whether we should adopt a shorter or longer transition period. We also solicited comment on whether the rules should provide for a longer transition period for certain categories of resource extraction issuers, such as smaller reporting companies or emerging growth companies.

Several commenters opposed a longer transition period for any category of issuer, including smaller reporting companies.[512] These commenters stated that issuers are generally on notice of the impending requirements and that companies track the required payment types in the normal course of doing business. They also noted that compliance costs for smaller companies are likely to be significantly lower than for large issuers since they usually have fewer payments to disclose. The Department of Interior noted that the USEITI does not make distinctions between issuers.

Some commenters recommended delaying the effective date for all issuers.[513] One of these commenters recommended an effective date beginning with a fiscal year ending no earlier than December 31, 2017,[514] while another deferred to industry comments.[515] Other commenters recommended delaying the effective date for specific categories of issuers.[516]

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[502] *See* letter from BP.

[503] *See* letter from RDS.

[504] *See* letter from Ropes & Gray.

[505] *See* letters from ACTIAM et al.; Bean; Calvert; International Transport Workers' Federation (Mar. 7, 2016) ("ITWF"); Oxfam 1; PWYP–US; Sen. Cardin et al.; Sen. Lugar et al.; TI–USA; and USSIF.

[506] *See* Proposing Release, Section II.G.6.

[507] Exchange Act Section 18(a) provides: "Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant." A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including reliance and damages.

[508] *See* letter from RDS. A foreign private issuer is required to submit under cover of a Form 6–K (17 CFR 249.306) information that the issuer: Makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized; files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or distributes or is required to distribute to its security holders. The Form 6–K report is deemed furnished, and not filed for purposes of Section 18, unless it has been specifically incorporated by reference into a previously filed Securities Act or Exchange Act registration statement or Exchange Act report, which is itself subject to Section 18.

[509] 15 U.S.C. 78m(q)(2)(F).

[510] Adopted rules typically go into effect 60 days after they are published in the **Federal Register**.

[511] *See* 2012 Adopting Release at 2 [77 FR 56365].

[512] *See* letters from Department of Interior and PWYP–US 1. *See also* letters from ACEP; Global Witness 1; and Oxfam 1.

[513] *See* letters from Encana and Ropes & Gray.

[514] *See* letter from Encana.

[515] *See* letter from Ropes & Gray.

3. Final Rules

The final rules require a resource extraction issuer to comply with Rule 13q–1 and Form SD for fiscal years ending no earlier than two years after the effective date of the adopted rules. We believe that this phase-in period is appropriate to provide all issuers with sufficient time to establish the necessary systems and procedures to capture and track all the required payment information before the fiscal year covered by their first Form SD filing starts. It also should afford issuers an appropriate opportunity to make any other necessary arrangements (such as obtaining modifications to existing contracts or seeking exemptive relief where warranted) to comply with Section 13(q) and these rules. This compliance date should also provide issuers with more time to consider the experience of companies reporting under similar payment transparency regimes, such as the EU Directives and ESTMA, which should reduce compliance costs.

As proposed, we are also selecting a specific compliance date that corresponds to the end of the nearest calendar quarter following the effective date. Thus, under the final rules, the initial Form SD filing for resource extraction issuers would cover the first fiscal year ending on or after September 30, 2018 and would not be due until 150 days later. Since most issuers use a December 31 fiscal year end, the filing deadline would not be until May 30, 2019 for most issuers. Given the length of time between the adoption of these rules and the start of the first fiscal year that must be reported, we do not believe any additional accommodations are necessary for smaller reporting companies, emerging growth companies, or other categories of issuers. We note that not providing longer phase-in periods for specific categories of issuers is consistent with the EITI and, for public companies, with the EU Directives and ESTMA.

III. Economic Analysis

A. Introduction and Baseline

We are adopting Rule 13q–1 and an amendment to Form SD to implement Section 13(q), which was added to the Exchange Act by Section 1504 of the Act. Section 13(q) directs the Commission to issue rules that require a resource extraction issuer to disclose in an annual report filed with the Commission certain information relating to payments made by the issuer (including a subsidiary of the issuer or an entity under the issuer's control) to a foreign government or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.

As discussed above, Congress intended that the rules issued pursuant to Section 13(q) would help advance the important U.S. foreign policy objectives of combatting global corruption and helping to promote accountability, thereby potentially improving governance in resource-rich countries around the world.[517] The statute seeks to achieve this objective by mandating a new disclosure provision under the Exchange Act that requires resource extraction issuers to identify and report payments they make to governments relating to the commercial development of oil, natural gas, or minerals. While these objectives and benefits differ from the investor protection benefits that our rules typically strive to achieve, investors and other market participants, as well as civil society in countries that are resource-rich, may benefit from any increased economic and political stability and improved investment climate that such transparency promotes.[518] In addition, some commenters stated that the information disclosed pursuant to Section 13(q) would benefit investors by, among other things, helping them model project cash flows and assess political risk, acquisition costs, and management effectiveness.[519]

We are sensitive to the costs and benefits of the rules we adopt, and Exchange Act Section 23(a)(2) requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 3(f) of the Exchange Act directs us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[520] We have considered the costs and benefits that would result from the final rules, as well as the potential effects on efficiency, competition, and capital formation. Many of the potential economic effects of the final rules would stem from the statutory mandate, while others would stem from the discretion we are exercising in implementing the statutory mandate. The discussion below addresses the costs and benefits that might result from both the statute and our discretionary choices, as well as the comments we received about these matters.[521] In addition, as discussed elsewhere in this release, we recognize that the final rules could impose a burden on competition, but we believe that any such burden that might result would be necessary and appropriate in furtherance of the purposes of Exchange Act Section 13(q).

As part of our analysis, we have quantified the potential economic effects of the final rules wherever possible. Given both the nature of the statute's intended benefits and the lack of data regarding the benefits and the costs, in some cases we have been unable to provide a quantified estimate. Nevertheless, as described more fully below, we provide both a qualitative assessment of the potential effects and a quantified estimate of the potential aggregate initial and aggregate ongoing compliance costs. We reach our estimates by carefully considering comments we received on potential costs and taking into account additional data and information, including recent global developments in connection with resource extraction payment transparency. We rely particularly on those comment letters that provided quantified estimates and were transparent about their methodologies. As discussed in more detail below, after considering the comment letters, we determined that it was appropriate to modify and/or expand upon some of the submitted estimates and methodologies to reflect data and information submitted by other commenters, as well as our own judgment and experience.

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[516] *See* letters from Cleary and Ropes & Gray. We address these comments in Section II.G above.

[517] *See* Section I.E of the Proposing Release.

[518] *See also* 156 Cong. Rec. S5873 (May 17, 2010) (Statement from Senator Cardin) ("Transparency helps create more stable governments, which in turn allows U.S. companies to operate more freely—and on a level playing field—in markets that are otherwise too risky or unstable."); and 156 Cong. Rec. S3816 (May 17, 2010) (Statement of Senator Lugar) ("Transparency empowers citizens, investors, regulators, and other watchdogs and is a necessary ingredient of good governance for countries and companies alike. . . . Transparency also will benefit Americans at home. Improved governance of extractive industries will improve investment climates for our companies abroad, it will increase the reliability of commodity supplies upon which businesses and people in the United States rely, and it will promote greater energy security.")

[519] *See, e.g.,* letters from Calvert Investments (Mar. 1, 2011) ("Calvert 1 (pre-proposal)"); California Public Employees Retirement System (Feb. 28, 2011) ("CalPERS (pre-proposal)"); and George Soros (Feb. 21, 2012) ("Soros (pre-proposal)").

[520] Some commenters incorrectly asserted that we are required by statute to minimize costs. *See, e.g.,* letter from API 1 at 15. Although we do not agree with this assertion, in crafting the final rules, we have sought to minimize costs to the extent possible, and we have attempted to ensure that any costs we are imposing are either necessary or appropriate in light of the foreign policy interests underlying Section 13(q).

[521] As discussed above, our discretionary choices are informed by the statutory mandate, and thus, discussion of the benefits and costs of those choices will necessarily involve the benefits and costs of the underlying statute.

The baseline the Commission uses to analyze the potential effects of the final rules is the current set of legal requirements and market practices.[522] To the extent not already encompassed by existing regulations and current market practices, the final rules likely will have a substantial impact on the disclosure practices of, and costs faced by, resource extraction issuers. The overall magnitude of the potential costs of the final disclosure requirements will depend on the number of affected issuers and individual issuers' costs of compliance. We expect that the final rules will affect both U.S. issuers and foreign issuers that meet the definition of "resource extraction issuer" in substantially the same way, except for those issuers already subject to similar requirements adopted in the EEA member countries or Canada as discussed below in Section III.C.1. The discussion below describes the Commission's understanding of the markets that are affected by the final rules. We estimate the number of affected issuers in this section and quantify their costs in Section III.B.2 below.

To estimate the number of potentially affected issuers, we use data from Exchange Act annual reports for 2015, the latest full calendar year. We consider all Forms 10–K, 20–F, and 40–F filed in 2015 by issuers with oil, natural gas, and mining Standard Industrial Classification ("SIC") codes[523] and, thus, are most likely to be resource extraction issuers. We also considered filings by issuers that do not have the above mentioned oil, natural gas, and mining SIC codes and added them to the list of potentially affected issuers if we determined that they might be affected by the final rules.[524] In addition, we have attempted to remove issuers that use oil, natural gas, and mining SIC codes but appear to be more accurately classified under other SIC codes based on the disclosed nature of their business. Finally, we have excluded royalty trusts from our analysis because we believe it is uncommon for such companies to make the types of payments that would be covered by the final rules. From these filings, we estimate that the number of potentially affected issuers is 755.[525] We note that this number does not reflect the number of issuers that actually made resource extraction payments to governments in 2015, but rather represents the estimated number of issuers that might make such payments.

In the following economic analysis, we discuss the potential benefits and costs and likely effects on efficiency, competition, and capital formation that might result from both the new reporting requirement mandated by Congress and from the specific implementation choices that we have made in formulating the final rules.[526] We analyze these potential economic effects in Sections III.B and III.C and provide qualitative and, wherever possible, quantitative discussions of the potential costs and benefits that might result from the payment reporting requirement and specific implementation choices, respectively.

B. Potential Effects Resulting From the Payment Reporting Requirement

1. Benefits

As noted above, we understand that Section 13(q) and the rules required thereunder are intended to advance the important U.S. foreign policy objective of combatting global corruption and helping to promote accountability, thereby potentially improving governance in resource-rich countries around the world.[527] The statute seeks to realize these goals by improving transparency about the payments that companies in the extractive industries make to national and subnational governments, including local governmental entities.[528] While these statutory goals and intended benefits are of global significance, the potential positive economic effects that may result cannot be readily quantified with any precision.[529] The current empirical evidence on the direct causal effect of increased transparency in the resource extraction sector on societal outcomes is inconclusive,[530] and several academic papers have noted the inherent difficulty in empirically validating a causal link between transparency interventions and governance improvements.[531]

We received several comments on quantifying the potential economic benefits of the final rules that are discussed in detail below.[532] Although these comments presented studies that attempt to quantify those benefits, as discussed below, they each have certain limitations that we believe prevent us from relying on them to quantify the final rules' potential benefits in improving accountability and governance in resource-rich countries around the world. Furthermore, no other commenters included reliable data that would allow us to quantify the potential economic benefits of the final rules or suggested a source of data or a methodology that we could readily look to in doing so.

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[522] *See* Section I above for a discussion of the current legal requirements and significant international transparency regimes that affect market practices.

[523] Specifically, the oil, natural gas, and mining SIC codes considered are 1000, 1011, 1021, 1031, 1040, 1041, 1044, 1061, 1081, 1090, 1094, 1099, 1220, 1221, 1222, 1231, 1311, 1321, 1381, 1382, 1389, 1400, 2911, 3330, 3331, 3334, and 3339.

[524] These are issuers whose primary business is not necessarily resource extraction but which have some resource extraction operations, such as ownership of mines.

[525] In the Proposing Release, using calendar year 2014 data, we estimated that the number of affected issuers would be 877.

[526] Our consideration of potential benefits and costs and likely effects on efficiency, competition, and capital formation also is reflected throughout the discussion in Section II above.

[527] *See* Proposing Release, Section I.E.

[528] *See id.*

[529] Further, we note that the Commission is not statutorily required to quantify the benefits here. *See Lindeen et al.* v. *SEC,* 2016 WL 3254610, *9 (Nos. 15–1149, 15–1150) (D.C. Cir. June 14, 2016) (explaining that the Commission is not required to "conduct a rigorous, quantitative economic analysis" nor "to measure the immeasurable") (internal quotation marks omitted); *see also id.* ("find[ing] that the SEC's discussion of unquantifiable benefits fulfills its statutory obligation to consider and evaluate" the potential economic effects of a Commission rule).

[530] For positive findings, see Caitlin C. Corrigan, "Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative", *Resources Policy,* 40 (2014), 17–30 (finding that the negative effect of resource abundance on GDP per capita, the capacity of the government to formulate and implement sound policies and the level of rule of law is mitigated in EITI countries but noting that the EITI has little effect on the level of democracy, political stability and corruption (the author also submitted a comment letter attaching an updated version of the study; *see* letter from Caitlin C. Corrigan (Feb. 16, 2016) ("Corrigan"))); Liz David-Barrett and Ken Okamura, "The Transparency Paradox: Why Do Corrupt Countries Join EITI?", Working Paper No. 38, European Research Centre for Anti-Corruption and State-Building (Nov. 2013) (finding that EITI compliant countries gain access to increased aid the further they progress through the EITI implementation process and that EITI achieves results in terms of reducing corruption), *available at https://eiti.org/document/transparency-paradox-why-do-corrupt-countries-join-eiti,* and Maya Schmaljohann, "Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI", University of Heidelberg Discussion Paper Series No. 538 (Jan. 2013) (finding that joining the EITI increases the ratio of the net foreign direct investment ("FDI") inflow to GDP by 2 percentage points). For negative empirical evidence, see Ölcer, Dilan (2009): Extracting the Maximum from the EITI (Development Centre Working Papers No. 276): Organisation for Economic Cooperation and Development (finding that the EITI has not been able to significantly lower corruption levels). However, all these papers discuss the earlier version of the EITI, which did not require project-level disclosure and rely on data generated prior to the implementation of the 2013 EITI Standard.

[531] *See* Andrés Mejía Acosta, "The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources", *Development Policy Review,* 31–S1 (2013), s89–s105; and Alexandra Gillies and Antoine Heuty, "Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource-Rich Countries", *Yale Journal of International Affairs,* Spring/Summer 2011, 25–42.

[532] *See* letter from Profs. Anthony Cannizzaro & Robert Weiner (Feb. 11, 2016) ("Cannizzaro & Weiner"). *See also* letters from API 1 (Appendix B) and Publish What You Pay—US (third of three letters on Mar. 8, 2016) ("PWYP–US 4") (both referring to a study by P. Healy and G. Serafeim). These letters and studies primarily focus on benefits to issuers and investors.

It is also important to note, however, that Congress has directed us to promulgate this disclosure rule. Thus, we believe it reasonable to rely on Congress's determination that the rule will produce the foreign policy and other benefits that Congress sought in imposing this mandate. Because of the important foreign policy interests at stake, we believe that Congress' determination that the potential benefits of disclosure justify such a rule is a decision that is owed considerable deference, and we do not believe that Congress intended that we second-guess its determination.

Moreover, as noted above, we concur with Congress' judgment that resource extraction payment disclosures could help to achieve a critical foreign policy objective of the U.S. Government. In reaching this conclusion, we are particularly mindful that a broad international consensus has developed on the potential benefits of revenue transparency.[533] Not only have the Canadian government[534] and the European Union[535] acknowledged the potential benefits by adopting disclosure requirements similar to what we are adopting, but even members of industry through their participation as stakeholders in EITI have acknowledged the benefits that revenue transparency can produce.[536] Perhaps most significantly, industry stakeholders in the EITI process (which notably includes a number of industry organizations)[537] have expressly adopted the position that the EITI disclosures (which now include identification of the issuers responsible for the payments and project-level reporting) produce "[b]enefits for implementing countries" by "strengthening accountability and good governance, as well as promoting greater economic and political stability."[538] Industry stakeholders in EITI have similarly accepted the view that "[b]enefits to civil society come from increasing the amount of information in the public domain about those revenues that governments manage on behalf of citizens, thereby making governments more accountable."[539]

Notably, none of the industry commenters expressed the view that the disclosures required by Section 13(q) would fail to help produce these anti-corruption and accountability benefits. Indeed, several commenters expressly acknowledged that transparency produces such benefits (notwithstanding the inability to reliably quantify those benefits). For example, one industry commenter stated that "[t]ransparency by governments and companies alike regarding revenue flows from the extraction of natural resources in a manner which is meaningful, practical and easily understood by stakeholders reduces the opportunity for corruption."[540] Another industry commenter expressed its view "that the disclosure of revenues received by governments and payments made by the extractive-industry companies to governments could lead to improved governance in resource-rich countries."[541] Yet another industry commenter stated that resource-revenue transparency efforts "are fundamental building blocks of good resource governance and are key to fostering better decision-making over public revenues."[542]

While there is no conclusive empirical evidence that would confirm whether the project-level, public disclosure that we are adopting will in fact reduce corruption, in forming our conclusion that payment transparency will further the identified U.S. foreign policy goals, we find persuasive the arguments and evidence advanced by several commenters throughout this rulemaking that have emphasized the potential benefits to civil society of such public disclosure.[543] We note that many of these commenters provided reasons why the benefits to civil society of contract-based, project-level reporting would help to reduce corruption and promote accountability more effectively than more aggregated reporting, such as country-level reporting.[544]

To support their claims, these commenters provided numerous examples of ways in which disaggregated payment information can be effective in helping to reduce corruption and promote accountability, and no commenters disputed these examples.[545] For example, these commenters stated that public availability of project-level data would enable civil society groups, citizens, and local communities to know how much their governments earn from the resources that are removed from their respective territories when the governments deny them such information. In addition, according to some commenters, the disclosure of project-level data will help citizens to monitor public expenditures for efficiency and effectiveness, allow citizens and governments to ensure that revenues are being redistributed by the central government to localities properly (according to benefit-sharing agreements), and provide a basis for communities to advocate with the government for public services.[546] One commenter suggested that project-level disclosure will empower citizens and civil society organizations to ensure that extractive revenues are used to generate public benefits for all and not just to enrich the elite, assist citizens to assess the development impact of extraction locally, and promote economic and social development, especially in communities that host natural resource extraction operations.[547] These commenters also stated that this information would help empower civil society organizations to advocate for a fairer share of revenues, double-check government-published budget data, and better calibrate their expectations from the extractive issuers. Commenters on the 2010 Proposing Release provided similar arguments.[548]

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[533] We also credit the views of the State Department and USAID that the disclosures we are requiring will help reduce corruption and promote accountability in resource-rich countries. Both agencies have a high degree of expertise and experience in these matters. Relatedly, we note that USAID has advanced a persuasive explanation for ways that the disclosures may help complement the agency's own efforts to combat corruption and enhance governance globally. *See* letter from USAID.

[534] *See, e.g.*, ESTMA, Section 6 ("The purpose of this Act is to implement Canada's international commitments to participate in the fight against corruption through the implementation of measures applicable to the extractive sector, including measures that enhance transparency and measures that impose reporting obligations with respect to payments made by entities."). *See also* ESTMA Guidance, at 2 ("Canadians will benefit from increased efforts to strengthen transparency in the extractive sector, both at home and abroad. Alongside Canada, the United States and European Union countries have put in place similar public disclosure requirements for their respective extractive industries. Together these reporting systems will contribute to raising global transparency standards in the extractive sector.").

[535] *See, e.g.*, European Commission Memo, "New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting)—frequently asked questions" (June 12, 2013) ("The new disclosure requirement will improve the transparency of payments made to governments all over the world by the extractive and logging industries. Such disclosure will provide civil society in resource-rich countries with the information needed to hold governments to account for any income made through the exploitation of natural resources, and also to promote the adoption of the Extractive Industries Transparency Initiative (EITI) in these same countries. . . . The reporting of payments to government by the extractive and logging industries will provide civil society with significantly more information on what specifically is paid by EU companies to host governments in exchange for the right to extract the relevant countries' natural resources. By requiring disclosure of payments at a project level, where those payments had been attributed to a specific project and were material, local communities will have insight into what governments were being paid by EU multinationals for exploiting local oil/gas fields, mineral deposits and forests. This will also allow these communities to better demand that government accounts for how the money had been spent locally. Civil society will be in a position to question whether the contracts entered into between the government and extractive and logging companies had delivered adequate value to society and government.").

[536] For example, in describing its involvement with EITI, ExxonMobil states that these "efforts to promote revenue transparency have helped fight corruption, improve government accountability and promote greater economic stability around the world." *See http://corporate.exxonmobil.com/en/current-issues/accountability/transparency/overview.* Similarly, when discussing its role in EITI, Chevron has acknowledged that revenue transparency is "an important pathway to improved governance." *See http://www.chevron.com/Stories/Progress-Partnerships-and-Transparency.* Royal Dutch Shell has also expressed the position that "[r]evenue transparency provides citizens with an important tool to hold their government representatives accountable and to advance good governance." *See http://www.shell.com/sustainability/transparency/revenues-for-governments.html.*

[537] *See Stakeholders, available at https://eiti.org/supporters/partnerorganizations* (last visited June 16, 2016).

[538] *https://eiti.org/eiti/benefits.*

[539] *Id.*

[540] *See* letter from BHP.

[541] *See* letter from Chevron.

[542] *See* letter from Eni SpA (Jan. 31, 2016) ("Eni").

[543] *See, e.g.*, letters from Global Witness 1, The ONE Campaign (Mar. 16, 2016) ("ONE Campaign"), Oxfam, PWYP–US 3, TI–USA, and USAID.

[544] *See* letter from Oxfam, PWYP–US 1, TI–USA.

a. Currently Available Empirical Analyses on Potential Social Gains From Transparency

As a threshold matter, we think it is important to observe that the EITI and other global transparency efforts are relatively new, which makes it difficult at this time to draw any firm empirical conclusions about the potential long-term benefits that such transparency regimes may produce for resource-rich countries. The causal mechanisms involved are complex (impacted by myriad factors) and it may take several decades before those mechanisms yield empirically verifiable social gains.[549]

A few commenters on the Proposing Release argued that the rules implementing Section 13(q) would generate societal benefits and cited studies that attempt to measure those benefits for countries that join the EITI.[550] While these studies provide useful insight into the potential benefits to be derived from resource payment transparency regimes, as discussed more fully below, we believe that there are limitations associated with each of these studies that make it difficult for us to draw firm conclusions based on their findings.

One commenter presented a study that found a significant increase in GDP when a resource-rich country joins the EITI.[551] The study also found that the increase in GDP appears to be larger the more dependent a country's economy is on natural resource sectors. While the study is informative, we have not relied on it to form any quantitative conclusions. The study does not take into account other factors that could be driving the increase in GDP and that could be correlated with a country's participation in the EITI. While the study controls for time-invariant (or country-specific) factors in the empirical model, it does not control for time-varying factors that could be driving the results, such as the change in the quality of the institutions in a country. It is possible that non-EITI driven institutional improvements over the period of time used in the study contributed to the increase in GDP. It is also possible that the improvement in institutions had an impact on the country's decision to join the EITI.

Another commenter cited two studies that examined the effect of a country joining the EITI on net foreign direct investment ("FDI").[552] One of the studies found that joining the EITI increased net FDI inflow by 50 percent, although the statistical significance of the results is marginal.[553] The other study also found that joining the EITI increased the net FDI as a fraction of GDP by two percent.[554] This second study, however, did not fully control for other factors that could jointly drive the increase in net FDI and affect the country's decision to join EITI, such as improvements in the quality of the country's institutions and overall improvement in the country's transparency. Thus, both of these studies have limitations that lessen our confidence in their results and hence our willingness to rely on them to quantify benefits from resource extraction payment transparency.

Another commenter presented two single country-based case studies of conflict and unrest, which the commenter attributed to corruption and lack of transparency. The studies measured the economic impact of such conflict and unrest on U.S. oil companies and used the avoidance of such economic costs as a means of quantifying the societal benefits of transparency.[555] In the first case study, the costs are estimated as the difference in revenues in years with conflict and unrest and a base year without such conflicts and unrest. The combined cost estimates from that study are approximately $17.4 billion over the period 2011–2014. In the second case study, the costs are estimated as unrealized revenues due to shut-in production events that are caused by conflict and unrest. The combined cost estimates from that study are approximately $14.7 billion over the period 2003–2016. In these case studies, however, it is difficult to distinguish the role that corruption and the lack of transparency played in stirring a country's conflict and unrest from the role that other factors such as ethnic conflicts, religious conflicts, and political repression may have played.

One commenter cited its own study suggesting that high levels of corruption (measured by bribery) correspond to lower levels of economic development.[556] The study found that higher levels of bribery were associated with higher maternal mortality, lower youth literacy rate, and lower access to basic sanitation. The same commenter cited another study that suggested that even small improvements in a country's governance resulted in higher income and lower infant mortality rates in the long run.[557] These findings seem broadly consistent with findings from other studies on the relationship between corruption and economic development.[558]

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[545] *See* Section I of the Proposing Release.

[546] *See* letter from ACEP, Publish What You Pay—US (Apr. 15, 2014) ("PWYP 7 (pre-proposal)"), and TI–USA.

[547] *See* letter from PWYP 7 (pre-proposal).

[548] *See, e.g.,* letters from Global Witness (Feb. 25, 2011) ("Global Witness 1 (pre-proposal)"); National Advocacy Coalition on Extractives (Feb. 10, 2015) ("NACE (pre-proposal)"); Oxfam America (Feb. 21, 2011) ("Oxfam 1 (pre-proposal)"); Publish What You Pay U.S. (Feb. 25, 2011) ("PWYP 1 (pre-proposal)"); Publish What You Pay Cameroon (June 8, 2015)("PWYP–CAM (pre-proposal)"); Publish What You Pay—Indonesia (Mar. 11, 2015)("PWYP–IND (pre-proposal)"); Publish What You Pay—Zimbabwe (Feb. 20, 2015) ("PWYP–ZIM (pre-proposal)"); Revenue Watch Institute (Feb. 17, 2011) ("RWI 1 (pre-proposal)"); and Syena Capital Management LLC (Feb. 17, 2011) ("Syena (pre-proposal)").

[549] *See, e.g.,* studies cited in the note 531 above.

[550] *See* letters from PWYP–US 1 and Corrigan.

[551] *See* letter from Corrigan (citing her earlier study: Corrigan, C. C. (2014). Breaking the Resource Curse: Transparency in the Natural Resource Sector and the Extractive Industries Transparency Initiative. *Resources Policy, 41*(1), 17–30).

[552] *See* letter from PWYP–US 1 (citing Fernando Londoño, "Does Joining the Extractive Industries Transparency Initiative Have an Impact on Extractive and Non-Extractive FDI Inflows?" (2014), *available at http://gppreview.com/wp-content/uploads/2014/02/Londono-F.pdf)* ("Londoño Study") and Maya Schmaljohann, "Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI" (Jan. 2013), *available at http://archiv.ub.uni-heidelberg.de/volltextserver/14368/1/Schmaljohann_2013_dp538.pdf* ("Schmaljohann Study")).

[553] *See* Londoño Study.

[554] *See* Schmaljohann Study.

[555] *See* letter from ONE Campaign.

[556] *See* letter from TI–USA.

b. Potential Benefits to Issuers and Investors From Transparency

To the extent that the final rules increase transparency and thus reduce corruption, they would increase efficiency and capital formation. While the objectives of Section 13(q) may not appear to be ones that would necessarily generate measurable, direct economic benefits to investors or issuers, investors and issuers might benefit from the final rules' indirect effects. In the following paragraphs, we discuss existing theoretical arguments and empirical evidence that reduced corruption and better governance could have longer term positive impacts on economic growth and investment in certain countries where the affected issuers operate, which could in turn benefit issuers and their shareholders.

Although the research and data available at this time does not allow us to draw any firm conclusions, we have considered several theoretical causal explanations for why reductions in corruption may increase economic growth and political stability, which in turn may reduce investor risk.[559] High levels of corruption could introduce inefficiencies in market prices as a result of increased political risks and the potential awarding of projects to companies for reasons other than the merit of their bids. This, in turn, could prop up inefficient companies and limit investment opportunities for others. These potential distortions could have a negative impact on the economies of countries with high corruption, particularly to the extent that potential revenue streams are diminished or diverted. Additionally, the cost of corrupt expenditures, direct or indirect, impacts profitability, and, if the cost is sufficiently high, some potentially economically efficient or productive investments may not be made. Thus, reducing corruption could increase the number of productive investments and the level of profitability of each investment and could lead to improved efficiency in the allocation of talent, technology, and capital. Insofar as these effects are realized, each of them could benefit issuers operating in countries with reduced corruption levels. These and other considerations form a basis for several dynamic general equilibrium models predicting a negative relationship between corruption and economic development.[560]

A number of empirical studies have also shown that reducing corruption might result in an increase in the level of GDP and a higher rate of economic growth through more private investments, better deployment of human capital, and political stability.[561] Other studies find that corruption reduces economic growth both directly and indirectly, through lower investments.[562] To the extent that increased transparency could lead to a reduction in corruption and, in turn, improved political stability and investment climate, some investors may consider such factors in their investment decisions, including when pricing resource extraction assets of affected issuers operating in these countries.[563] We note that some commenters on the Proposing Release supported this view.[564]

There also could be positive externalities from increased investor confidence to the extent that improved economic growth and investment climate could benefit other issuers working in those countries. Although we believe the evidence is presently too inconclusive to allow us to predict the likelihood that such a result would occur, we note that there is some empirical evidence suggesting that lower levels of corruption might reduce the cost of capital and improve valuations for some issuers.[565]

One commenter asserted that the studies cited above discuss primarily a single form of corruption—bribery—that in the commenter's view is not subject to the disclosures required by Section 13(q) and hence the commenter contended that these studies do not support our view that the required disclosures might achieve economic benefits resulting from reduced corruption.[566] We acknowledge that the specific studies that the commenter mentions do focus on bribery as a form of corruption. All the other studies that we cite, which are not specifically mentioned by the commenter, do discuss corruption in general and its effect on economic growth. In fact, some specifically discuss the type of corruption addressed by the final rules.[567] Furthermore, to the extent that Section 13(q) is successful in reducing the corruption in the form of misuse of funds, it could also reduce quid-pro-quo corruption as well. For example, if the government and issuers are more strictly monitored by citizens and society as a result of the final rules, they may become more reluctant to engage in quid-pro-quo corruption. It is also possible that some of the payments that are reportable under Section 13(q) are an implicit form of bribery: For example, government officials could agree, instead of a bribe, to receive another type of payment from an issuer that could be expropriated by these officials later, after the payment is made. If the disclosure under Section 13(q) is successful in decreasing the misuse of funds, this type of implicit quid-pro-quo corruption could be reduced as well.

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[557] *See* Daniel Kaufmann, Governance Matters 2010: Worldwide Governance Indicators Highlight Governance Successes, Reversals and Failures, *available at http://www.brookings.edu/research/opinions/2010/09/24-wgi-kaufmann.*

[558] *See* Section I.E of the Proposing Release.

[559] *See, e.g.,* reviews by P. Bardhan, "Corruption and Development: A Review of Issues," *Journal of Economic Literature,* 35, no. 3, 1320–1346 (1997) and J. Svensson, "Eight Questions about Corruption," *Journal of Economic Perspectives,* 19, no. 3, 19–42 (2005).

[560] *See, e.g.,* I. Ehrlich and F. Lui "Bureaucratic Corruption and Endogenous Economic Growth," *Journal of Political Economy,* 107 (6), 270–293 (1999); K. Blackburn, N. Bose, and E.M. Haque, "The Incidence and Persistence of Corruption in Economic Development," *Journal of Economic Dynamics and Control* 30, 2447–2467 (2006); and C. Leite and J. Weidmann, "Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth," International Monetary Fund Working Paper No. 99/85 (July 1999).

[561] *See, e.g.,* P. Mauro, "The effects of corruption on growth, investment and government expenditure: A cross country analysis," in K.A. Elliot (ed.) *Corruption and the Global Economy,* Washington DC: Institute for International Economics, 83–107 (1997); H. Poirson, "Economic Security, Private Investment, and Growth in Developing Countries," International Monetary Fund Working Paper No. 98/4 (Jan. 1998); Institute for Economics and Peace, Peace and Corruption Report (2015).

[562] *See* Pak Hung Mo, "Corruption and Economic Growth," *Journal of Comparative Economics* 29, 66–79 (2001); K. Gyimah-Brempong, "Corruption, economic growth, and income inequality in Africa," *Economics of Governance* 3, 183–209 (2002); and Pierre-Guillaume Méon and Khalid Sekkat, "Does corruption grease or sand the wheels of growth?" *Public Choice* 122, 69–97 (2005).

[563] Several studies present evidence that reduction in corruption increases foreign direct investments. *See, e.g.,* S.-J. Wei, "How Taxing is Corruption on International Investors?" *NBER Working Paper* 6030 (1997) and G. Abed and H. Davoodi, "Corruption, Structural Reforms, and Economic Performance in the Transition Economies," International Monetary Fund Working Paper No. 00/132 (July 2000).

[564] *See* letter from ACTIAM et al., Calvert, and PWYP–US 1.

[565] *See* D. Kaufmann and S. J. Wei "Does 'Grease Money' Speed Up the Wheels of Commerce?" NBER Working Paper 7093 (1999) (finding, based on survey evidence, that firms that pay fewer bribes have lower, not higher, cost of capital); and C. Lee and D. Ng, "Corruption and International Valuation: Does Virtue Pay?" *Journal of Investing,* 18, no. 4, 23–41 (2009) (finding that firms from more corrupt countries trade at significantly lower market multiples).

[566] *See* letter from API 1. As we explained above, we believe that this commenter has an unduly narrow view of the anti-corruption objectives of Section 13(q) and, thus, we disagree with the claim that Section 13(q) is unconcerned with helping to reduce bribery. See Section II.E.3.

[567] *See, e.g.,* the study by J. Svensson at note 559 above, which defines corruption as misuse of public office for private gain. That study cites examples of corruption that are similar to the types of corruption the final rules are trying to address. For example, the study discusses the diversion of funds allocated to school districts in Uganda and road building projects in Indonesia by government officials in these countries. In Uganda, according to the study, only 13 percent of the funds allocated to the school districts actually reached them; the bulk of the grants was captured by local government officials and politicians. As this evidence became known and the central government began to publish newspaper accounts of monthly transfers to districts, so that school staff and parents could monitor local officials, schools received an average of 80 percent of their annual entitlements.

We also note that some commenters on the Proposing Release [568] stated that the disclosures required by Section 13(q) could provide useful information to investors in making investment decisions. Although we do not believe this is the primary purpose of the required disclosures, we acknowledge the possibility that the disclosures could provide potentially useful information to certain investors. Some commenters, for example, stated that the new disclosures could help investors better assess the risks faced by resource extraction issuers operating in resource-rich countries.[569]

One of these commenters identified several benefits that project-level reporting would generate for investors.[570] First, according to the commenter, such reporting would help investors assess the effectiveness of the diversification of risks within a portfolio by enabling them to understand better the risk profiles of individual projects within a given country and the contribution of each project to the overall returns and variation in returns of the portfolio of projects that an issuer has in that country. Another commenter expressed a similar view.[571] We note, however, that additional information, beyond the disclosure required by Section 13(q), is needed to estimate returns and variation of returns of a project or portfolio of projects in a given country. For example, investors and analysts will need cash flow information (revenues and total costs, not only those paid to the local government) and cost of capital per project, which may not be readily available. Thus, the extent to which the disclosure required by Section 13(q) may generate this particular benefit is unclear.

A second benefit for investors, according to the commenter, is that project-level reporting would help adjust assumptions on a major cost to the project: the effective tax rate of the host government, the total taxes and other payments to governments. The commenter provided a hypothetical example in which information on the effective tax rate paid increases the estimate of the value of the company by three percent. While the benefit of having accurate tax information when valuing a project or a company is indisputable, it is unlikely, as we indicated above, that an investor or analyst will have accurate information for other components (*e.g.,* revenues, total costs, and cost of capital) necessary to value a project. If those components must be estimated, as is typically the case, the detailed tax information may not have a first order effect on project/company value, or at least may not yield a substantial advantage over simply using the marginal tax rate of the host country.

A third benefit for investors, according to the commenter, is that the project-level disclosure would help investors assess the issuer's exposure to commodity price downturns by analyzing industry cost curves to forecast commodity prices. As noted above, such benefit assumes that all other relevant costs (*e.g.,* production costs and capital expenditures), besides the one reported under Section 13(q), are known to investors, which may not be the case.

A fourth benefit for investors, according to the commenter, is that project-level disclosure would result in lower cost of capital because it makes firms more transparent and thus creates trust with investors. The commenter cites two studies that find a positive link between transparency and cost of capital. The studies, however, do not provide evidence that resource extraction transparency in particular leads to lower cost of capital; rather, the studies conclude more generally that earnings transparency and the strength of the country's securities regulations can have a major impact on cost of capital. Transparency regarding key company financial and accounting information will likely have a stronger effect on cost of capital than transparency regarding the company's resource payments.[572]

A fifth benefit for investors, according to the commenter, is that increased transparency may lead to lower political risk. Such a benefit, however, depends not only on resource extraction payment disclosure, but also on other types of disclosure and the quality of the governance of the host country. Disclosure under Section 13(q) by itself may not result in lower political risk.

While we acknowledge all these comments, we believe that the direct incremental benefit to investors from this information may be limited given that most impacted issuers, other than smaller reporting companies,[573] are already required to disclose their most significant operational and financial risks as well as certain financial information related to the geographic areas in which they operate in their Exchange Act annual reports.[574]

In response to the Proposing Release, one commenter suggested an additional approach to quantify the rule's benefits to investors.[575] A few other commenters referenced another study using a similar methodology.[576] Both of these studies use issuers' stock price reaction to various events associated with the rulemaking process to measure investors' view on the effect of the rule on the value of their investments.[577] The studies posit that aggregating stock market gains or losses (adjusted for other factors) for resource extraction issuers around the relevant events enables the quantification of the aggregate monetary gains or losses that investors attribute to the rule. We note that even though these two studies use similar approaches (*i.e.*, an event study) to quantify the potential benefits to investors, they arrive at somewhat different conclusions with respect to the rule's perceived benefits.[578]

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[568] *See* letters from Bean, Calvert, ITWF, Peck & Chayes, Sen. Cardin et al., Sen. Lugar et al., TI–USA, and USSIF.

[569] *See* letters from Calvert, Columbia Center on Sustainable Investment (Oct. 30, 2015) (''Columbia Center (pre-proposal)''), and ACTIAM et al. Some commenters on the 2010 Proposing Release had similar views. *See, e.g.,* letters from EarthRights International (Sept. 20, 2011) (''ERI 2 (pre-proposal)''); Global Witness 1 (pre-proposal); PGGM Investments (Mar. 1, 2011) (''PGGM (pre-proposal)''); and Oxfam 1 (pre-proposal).

[570] *See* letter from Columbia Center (pre-proposal).

[571] *See* letter from Robert F. Conrad, Ph.D. (July 17, 2015) (''Conrad (pre-proposal)'').

[572] Finance theory implies that a firm's cost of capital depends primarily on the covariance between its future free cash flows and the cash flows from other available investments in the market. *See, e.g.,* R. Lambert, C. Leuz, and R. Verrecchia, ''Accounting information, disclosure, and the cost of capital,'' *Journal of Accounting Research,* 45, 385–420 (2007). The relevant free cash flows apply to the entire firm, as reflected in its overall disclosures and top line financial measures. Because resource payments are already incorporated within a firm's reported cash flows, improved transparency about resource payments is unlikely to have a large impact on a firm's cost of capital.

[573] About 43 percent of affected issuers are smaller reporting companies that are not obligated to disclose in their Exchange Act annual reports significant risk factors they face. For such companies, the resource extraction payments disclosure could provide incremental information that might benefit some investors, to the extent that they would not otherwise have a requirement to disclose the political or economic risks related to operating in resource-rich countries. We do not, however, have data on whether such companies have material operations in politically volatile regions and whether they have exposure to risks described by commenters.

[574] *See* Item 1A and Item 10(d)(3) of Form 10–K and Item 3.D of Form 20–F. *See also* Item 1 of Form 10–K which requires disclosure of revenues from external customers attributed to any individual foreign country, if material, and long lived assets located in any individual foreign country, if material and Item B.2 of Form 20–F which requires disclosure of the principal markets in which the company competes, including a breakdown of total revenues by category of activity and geographic market for each of the last three financial years. In addition, pursuant to Item 7 of Form 10–K and Item 5D Form 20–F, registrants other than smaller reporting companies are required to provide a discussion of any known trends or uncertainties that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations or the registrant's liquidity.

[575] *See* letter from Cannizzaro and Weiner.

We carefully considered each of these studies, but note that there are a number of potential limitations in the analysis: certain of the events used in these studies may be confounded by other events; [579] neither of the studies considers alternative measures of expected market return; [580] and neither of the studies reports the statistical significance of their findings. Consequently, we are unable to rely on these studies to draw unambiguous conclusions about investors' attitudes towards the overall effect of the costs and benefits of the rule as expressed in their valuation of resource extraction issuers on certain event dates.

2. Costs

We received a number of comments on the compliance costs that would be imposed by the proposed rules. We first summarize these comments in the subsection immediately below and then, in the following subsections, we assess these comments as part of our discussion of the final rules' potential direct and indirect compliance costs and their potential effects on competition.

a. Commenters' Views of Compliance Costs

Many commenters stated that the reporting regime mandated by Section 13(q) would impose significant compliance costs on issuers. During the comment period after the 2010 Proposing Release, several commenters specifically addressed the cost estimates presented in the Paperwork Reduction Act ("PRA") section of that release.[581] Other commenters discussed the costs and burdens to issuers generally as well as costs that could have an effect on the PRA analysis.[582] In the Proposing Release, in response to comments previously received, we revised our estimates of both initial and ongoing compliance costs. In addition, also in response to comments, we made several changes to our PRA estimates that were designed to better reflect the burdens associated with the new disclosure requirements. In response to the Proposing Release, a number of commenters submitted letters reiterating and emphasizing the potential of the proposed rules to impose substantial costs.[583] Only one commenter suggested an alternative quantitative estimate of the direct compliance costs.[584] We discuss this estimate below, after a brief discussion of the comments on the cost estimates that were provided on the 2010 Proposing Release.

Some commenters on the 2010 Proposing Release disagreed with our industry-wide estimate of the total annual increase in the collection of information burden and argued that it underestimated the actual costs that would be associated with the rules.[585] These and other commenters stated that, depending upon the final rules adopted, the compliance burdens and costs arising from implementation and ongoing compliance with the rules would be significantly higher than those estimated by the Commission.[586] However, these commenters generally did not provide quantitative analysis to support their estimates.[587]

Commenters on the 2010 Proposing Release also stated that modifications to issuers' core enterprise resource planning systems and financial reporting systems would be necessary to capture and report payment data at the project level, for each type of payment, government payee, and currency of payment.[588] These commenters estimated that the resulting initial implementation costs would be in the tens of millions of dollars for large issuers and millions of dollars for many small issuers.[589] Two of these commenters provided examples of the modifications that would be necessary, including establishing additional granularity to existing coding structures (*e.g.,* splitting accounts that contain both government and non-government payment amounts), developing a mechanism to appropriately capture data by "project," building new collection tools within financial reporting systems, establishing a trading partner structure to identify and provide granularity around government entities, establishing transaction types to accommodate types of payment (*e.g.,* royalties, taxes, or bonuses), and developing a systematic approach to handle "in-kind" payments.[590] These two commenters estimated that total industry costs for initial implementation of the final rules could amount to hundreds of millions of dollars.[591]

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[576] *See* letters from API 1 (Appendix B) and PWYP–US 4 that both refer to the study by P. Healy and G. Serafeim, "Voluntary, Self-Regulatory and Mandatory Disclosure of Oil and Gas Company Payments to Foreign Governments", Working Paper (2015), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1961404.*

[577] Cannizzaro and Weiner consider four events: the adoption of the rule by the Commission on August 22, 2012, the API lawsuit filing on October 10, 2012, the vacation of the rule by the court on July 2, 2013, and the December 11, 2015, reproposal of the rule. Healy and Serafeim consider seven events: the House-Senate Conference Committee meeting on the Dodd-Frank Act on June 24, 2010, the passage of the Dodd-Frank Act on June 26, 2010, the signing of the Dodd-Frank Act on July 21, 2010, the adoption of the rule by the Commission on August 22, 2012, the API lawsuit filing on October 10, 2012, the vacation of the rule by the court on July 2, 2013, and the API comment letter submission on November 7, 2013.

[578] The studies use different events, sample selection criteria, and measures of expected return. Healy and Serafeim found that investors negatively reacted to relevant events: they find that the average cumulative abnormal return for 26 stocks in their sample for the 3-day window around the days of studied events is −1.90% for events that increase probability that the rules would be implemented and +1.06% for events that decrease the probability that the rules would be implemented. Cannizzaro and Weiner generally found that investors positively reacted to relevant events. They find that the median cumulative abnormal returns for indexes or exchange traded funds that focus on extractive industries for the 3-day (7-day) window around the days of studied events are +0.28% (+0.26%) and +0.66% (+1.83%) for events that increase probability that the rules would be implemented and +0.35% (−0.31%) and −2.77% (−4.83%) for events that decrease the probability that the rules would be implemented.

[579] For example, the Dodd-Frank Act is a multipart law, of which Section 13(q) is just one part. Therefore, it is not clear whether the reported results describe the market reaction to the entire Dodd-Frank Act or to Section 13(q) only.

[580] For example, the Healy and Serafeim study does not adjust expected stock return for the change in oil, natural gas, or other commodities prices, and the Cannizzaro and Weiner study does not consider alternative models of market return (*e.g.*, the Fama-French three-factor model).

[581] *See* the following pre-proposal letters from American Petroleum Institute (Jan. 28, 2011) ("API 1 (pre-proposal)"); American Petroleum Institute (Aug. 11, 2011) ("API 2 (pre-proposal)"); Barrick Gold Corporation (Feb. 28, 2011) ("Barrick Gold (pre-proposal)"); ERI 2 (pre-proposal); Exxon Mobil (Jan. 31, 2011) ("ExxonMobil 1 (pre-proposal)"); ExxonMobil (Oct. 25, 2011) ("ExxonMobil 3 (pre-proposal)"); National Mining Association (Mar. 2, 2011) ("NMA 2 (pre-proposal)"); Rio Tinto plc (Mar. 2, 2011) ("Rio Tinto (pre-proposal)"); Royal Dutch Shell plc (Jan. 28, 2011) ("RDS 2 (pre-proposal)"); and Royal Dutch Shell (Aug. 1, 2011) ("RDS 4 (pre-proposal)").

[582] *See, e.g.*, letters from British Petroleum p.l.c. (Feb. 11, 2011) ("BP 1 (pre-proposal)"); Chamber of Commerce Institute for 21st Century Energy (Mar. 2, 2011) ("Chamber Energy Institute (pre-proposal)"); Chevron Corporation (Jan. 28, 2011) ("Chevron (pre-proposal)"); Cleary Gottlieb Steen & Hamilton (Mar. 2, 2011) ("Cleary (pre-proposal)"); Hermes Equity Ownership Services Ltd. (Mar. 2, 2011) ("Hermes (pre-proposal)"); and PWYP 1 (pre-proposal).

[583] *See, e.g.*, letters from API 1 and ExxonMobil 1.

[584] *See* letter from Claigan Environmental (Feb. 16, 2016) ("Claigan").

[585] *See* letters from API 1 (pre-proposal), ExxonMobil 1 (pre-proposal).

[586] *See* letters from API 1 (pre-proposal); API 2 (pre-proposal); American Petroleum Institute (Jan. 19, 2012) ("API 3 (pre-proposal)"); Barrick Gold (pre-proposal); ExxonMobil 1 (pre-proposal); NMA 2 (pre-proposal); Rio Tinto (pre-proposal); and RDS 2 (pre-proposal).

[587] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal). ExxonMobil 1 (pre-proposal) did provide estimated implementation costs of $50 million if the definition of "project" is narrow and the level of disaggregation is high across other reporting parameters. This estimate is used in our analysis below of the expected implementation costs.

[588] *See* letters from API 1 (pre-proposal); ExxonMobil 1 (pre-proposal); and RDS 2 (pre-proposal).

[589] *See* letters from API 1 (pre-proposal); ExxonMobil 1 (pre-proposal); and RDS 2 (pre-proposal). These commenters did not describe how they defined small and large issuers.

These commenters added that these estimated costs could be significantly greater depending on the scope of the final rules.[592] They suggested, for example, that costs could increase depending on how the final rules define "project" and whether the final rules require reporting of non-consolidated entities, require "net" and accrual reporting, or require an audit.[593] Another commenter estimated that the initial set up time and costs associated with the rules implementing Section 13(q) would require 500 hours for the issuer to change its internal books and records and $100,000 in information technology consulting, training, and travel costs.[594] One commenter representing the mining industry estimated that start-up costs, including the burden of establishing new reporting and accounting systems, training local personnel on tracking and reporting, and developing guidance to ensure consistency across reporting units, would be at least 500 hours for a mid-to-large sized multinational issuer.[595]

Two commenters stated that arriving at a reliable estimate for the ongoing annual costs of complying with the rules would be difficult because the rules were not yet fully defined but suggested that a "more realistic" estimate than the estimate included in the 2010 Proposing Release is hundreds of hours per year for each large issuer that has many foreign locations.[596] Commenters also indicated that costs related to external professional services would be significantly higher than the Commission's estimate, resulting primarily from XBRL tagging and higher printing costs, although these commenters noted that it is not possible to estimate these costs until the specific requirements of the final rules are determined.[597]

One commenter on the 2010 Proposing Release estimated that ongoing compliance with the rules implementing Section 13(q) would require 100–200 hours of work at the head office, an additional 100–200 hours of work providing support to its business units, and 40–80 hours of work each year by each of its 120 business units, resulting in an approximate yearly total of 4,800–9,600 hours and $2,000,000–$4,000,000.[598] One large multinational issuer estimated an additional 500 hours each year, including time spent to review each payment to determine if it is covered by the reporting requirements and ensure it is coded to the appropriate ledger accounts.[599] Another commenter representing the mining industry estimated that, for an issuer with a hundred projects or reporting units, the annual burden could be nearly 10 times the estimated PRA burden set out in the 2010 Proposing Release.[600] This commenter stated that its estimate takes into account the task of collecting, cross-checking, and analyzing extensive and detailed data from multiple jurisdictions around the world, as well as the potential for protracted time investments to comply with several aspects of the rules proposed in 2010 that are not included in the current final rules.[601] This commenter also stated that the estimate in the 2010 Proposing Release did not adequately capture the burden to an international company with multiple operations where a wide range of personnel would need to be involved in capturing and reviewing the data for the required disclosures as well as for electronically tagging the information in XBRL format.[602]

In response to the Proposing Release, only one commenter suggested an alternative quantitative estimate of the direct compliance costs.[603] The commenter's suggested approach is different from other approaches suggested by commenters and from the approach presented in the Proposing Release in that it considers aggregate industry costs directly rather than on a per issuer basis. Starting from an estimate of the total number of fields or mines in the world, the commenter first derived an estimate of the number of projects per field or mine that might be reportable under the final rules. The commenter then multiplied the number of reportable projects by the estimated cost for an issuer to report its activities for an individual field or mine to calculate total compliance costs to be incurred by all issuers. The quantitative estimates derived from this approach are within our range of estimates (see the numerical comparison in Section III.B.2.b. below). However, we note that some of the commenter's assumptions are not fully explained (*e.g.,* the number of internal and external hours per issuer per field or mine that issuers would spend on compliance with the rules).

Although commenters on the Proposing Release did not address whether compliance costs have been overstated, commenters on the 2010 Proposing Release expressed that view.[604] One commenter stated that most issuers already have internal systems in place for recording payments that would be required to be disclosed under Section 13(q) and that many issuers currently are subject to reporting requirements at a project level.[605]

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[590] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal).

[591] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal).

[592] *See* letters from API 1 (pre-proposal); ExxonMobil 1 (pre-proposal); and RDS 2 (pre-proposal).

[593] *See* letters from API 1 (pre-proposal); ExxonMobil 1 (pre-proposal); and RDS 2 (pre-proposal). As previously discussed, the final rules do not require the payment information to be audited or reported on an accrual basis; therefore, commenters' concerns about possible costs associated with these items should be alleviated. *See* Section II.G.5 of the Proposing Release.

[594] *See* letter from Barrick Gold (pre-proposal).

[595] *See* letter from NMA 2 (pre-proposal).

[596] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal) (each noting that estimates would increase if the final rules contain an audit requirement or if the final rules are such that issuers are not able to automate material parts of the collection and reporting process).

[597] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal).

[598] *See* letter from Rio Tinto (pre-proposal). These estimates exclude initial set-up time required to design and implement the reporting process and develop policies to ensure consistency among business units. They also assume that an audit is not required.

[599] *See* letter from Barrick Gold (pre-proposal).

[600] *See* letter from NMA 2 (pre-proposal).

[601] *See* id. Most of the time investments outlined by this commenter would not apply to the final rules, such as the cost of seeking information from non-consolidated "controlled" entities, obtaining compliance advice on the application of undefined terms such as "project," and reviews of the disclosure in connection with periodic certifications under the Sarbanes Oxley Act. Certain potential costs outlined by the commenter, however, would apply to the final rules, such as those associated with implementing new systems based on our final definition of "project" and other definitions and costs associated with attempting to secure an exemption from the Commission when foreign law prohibitions on disclosure apply.

[602] *See* letter from NMA 2 (pre-proposal).

[603] *See* letter from Claigan.

[604] *See* letters from ERI 2 (pre-proposal); Oxfam 1 (pre-proposal); PWYP 1 (pre-proposal); and RWI 1 (pre-proposal).

[605] *See* letter from RWI 1 (pre-proposal) (noting that Indonesia requires reporting at the production sharing agreement level and that companies

Another commenter anticipated that, while the rules would likely result in additional costs to resource extraction issuers, such costs would be marginal in scale because, in the commenter's experience, many issuers already have extensive systems in place to handle their current reporting requirements and any adjustments needed as a result of Section 13(q) could be done in a timely and cost-effective manner.[606] Another commenter believed that issuers could adapt their current systems in a cost-effective manner because they should be able to adapt a practice undertaken in one operating environment to those in other countries without substantial changes to the existing systems and processes of an efficiently-run enterprise.[607]

Another commenter stated that, in addition to issuers already collecting the majority of information required to be made public under Section 13(q) for internal record-keeping and audits, U.S. issuers already report such information to tax authorities at the lease and license level.[608] This commenter added that efficiently-run issuers should not have to make extensive changes to their existing systems and processes to export practices undertaken in one operating environment to another.[609] However, another commenter disagreed that issuers already report the payment information required by Section 13(q) for tax purposes.[610] This commenter also noted that tax reporting and payment periods may differ.

One commenter, while not providing competing estimates, questioned the accuracy of the assertions relating to costs from industry participants,[611] noting that: (i) Some issuers already report project-level payments in certain countries in one form or another and under a variety of regimes; (ii) some EITI countries are already moving toward project-level disclosure; and (iii) it is unclear whether issuers can save much time or money by reporting government payments at the material project or country level.[612]

b. Quantitative Estimates of Compliance Costs

In the Proposing Release, we presented a quantitative estimate of the compliance costs associated with the proposed rules. No commenters specifically addressed this quantitative estimate or provided additional data that we could use to update or refine this estimate. Because we have not received quantitative estimates using the same or similar approaches that take into account the differences between the rules proposed in 2010 and those proposed in the Proposing Release, we use the approach presented in the Proposing Release and the quantitative information supplied by commenters in response to the 2010 Proposing Release to assess the initial and ongoing compliance costs of the final rules.[613] We supplement and compare this analysis with the cost estimate supplied by one commenter that used a different approach.[614] Our general approach is to estimate the upper and lower bounds of the compliance costs for each potentially affected issuer and then to sum up these estimates to estimate the aggregate compliance costs.[615] As discussed in Section III.A above, we estimate that, as of the end of 2015, 755 issuers would be potentially affected by the final rules.[616] However, in determining which issuers are likely to bear the full costs of compliance with the final rules, we make two adjustments to the list of affected issuers. First, we exclude those issuers that will be subject to disclosure requirements in foreign jurisdictions that are substantially similar to the final rules and therefore will likely already be bearing compliance costs for such disclosure. Second, we exclude small issuers that likely could not have made any payment above the de minimis amount of $100,000 to any government entity in 2015.

To address the first consideration, we searched the filed annual forms and forms' metadata for issuers that have a business address, are incorporated, or are listed on markets in the EEA or Canada. For purposes of our analysis, we assume that those issuers will already be subject to similar resource extraction payment disclosure rules in those jurisdictions by the time the final rules become effective and, thus, that the additional costs to comply with the final rules will be much lower than costs for other issuers.[617] We identified 192 such issuers.[618]

Second, among the remaining 563 issuers (*i.e.,* 755 minus 192) we searched for issuers that, in the most recent fiscal year as of the date of their Exchange Act annual report filing, reported that they are shell companies, and, thus, have no or only nominal operations, or have both revenues and absolute value net cash flows from investing activities of less than the de minimis payment threshold of $100,000. Under those financial constraints, such issuers are unlikely to have made any non-de minimis and otherwise reportable payments to governments and therefore are unlikely to be subject to the adopted reporting requirements. We identified 138 such issuers.

Taking these estimates of the number of excluded issuers together, we estimate that approximately 425 issuers (*i.e.,* 755 minus 192 minus 138) would bear the full costs of compliance with the final rules.[619]

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operating on U.S. federal lands report royalties paid by lease).

[606] *See* letter from Hermes (pre-proposal).

[607] *See* letter from RWI 1 (pre-proposal).

[608] *See* letter from PWYP 1 (pre-proposal).

[609] *See id.* (citing statement made by Calvert Investments at a June 2010 IASB-sponsored roundtable).

[610] *See* letter from Rio Tinto (pre-proposal) ("[t]his is a simplistic view, and the problem is that tax payments for a specific year are not necessarily based on the actual accounting results for that year.").

[611] *See* letter from ERI 2 (pre-proposal).

[612] This commenter also explained that any costs would be limited because, among other things, issuers are already required to keep records of their subsidiaries' payments to governments under the Foreign Corrupt Practices Act. *Id.*

[613] *See* letters from Barrick Gold (pre-proposal), ExxonMobil 1 (pre-proposal), and Rio Tinto (pre-proposal) discussed above in Section III.B.2.a. One commenter also provided estimates of initial compliance hours that are similar to Barrick Gold. *See* letter from NMA 2 (pre-proposal). We are unaware of reliable data that would allow us to estimate the impact of changed provisions, (*e.g.,* the change in the definition of the term "control").

[614] *See* letter from Claigan discussed above. This commenter's cost estimates are largely consistent with our estimates.

[615] There may be some uncertainty surrounding who will ultimately bear the compliance costs. Depending on market conditions and the degree of competition, issuers may attempt to pass some or all of their costs on to other market participants. This consideration, however, does not change our estimates.

[616] We acknowledge that, as one commenter suggested, some of these issuers are affiliated and thus are likely to share compliance systems and fixed costs of creating such systems. *See* letter from Publish What You Pay United States (Nov. 12, 2015) ("PWYP–US 2 (pre-proposal)"). Due to difficulties in determining affiliation status, however, we have not attempted to eliminate these issuers from our estimates, and therefore our estimates may overstate the potential costs. Nevertheless, this potential overstatement of costs would not apply in one of the cases we consider below, the case of no fixed costs, because the costs would depend only on the total assets of affected issuers, not on the number of them.

[617] We assume that an issuer will be subject to the EEA or Canadian rules if it is listed on a stock exchange located in one of these jurisdictions or if it has a business address or is incorporated in the EEA or Canada and its total assets are greater than $50 million. The latter criteria is a proxy for multipronged eligibility criteria underlying both EEA and Canadian rules that include issuer assets, revenues, and the number of employees.

[618] We are adopting an alternative reporting option as part of the final rules and recognizing the disclosure requirements of these jurisdictions to be substantially similar to our rules. Thus, for these issuers, the additional cost will be negligible compared to the compliance costs we consider in this section. *See also* Section III.C.2 below.

[619] Because it may be uncertain at the beginning of a financial period as to whether payments from an issuer will exceed the de minimis threshold by the end of such period, an excluded issuer may incur costs to collect the information to be reported

Continued

To establish an upper and lower bound for the initial compliance costs estimates, we use the initial compliance cost estimates from Barrick Gold and ExxonMobil referenced above. We note, however, that these cost estimates were provided by the commenters during the comment period after the 2010 Proposing Release and were based on policy choices made in that proposal and reflected the other international regulatory regimes in place at that time.[620] Since then we have changed our approach (*e.g.,* the final rules define the term "control" based on accounting principles, which we believe will be easier and less costly for issuers to apply)[621] and international reporting regimes have undergone considerable development.[622] These developments are likely to significantly lower the compliance costs associated with the final rules. However, as noted above, we have not received comment letters with reliable quantitative assessments of the extent to which these changes would reduce commenters' cost estimates and, thus, we use the original commenters' estimates without adjustment.

Our methodology to estimate initial compliance costs applies the specific issuer cost estimates from Barrick Gold and ExxonMobil, $500,000 and $50,000,000, respectively,[623] to the average issuer and then multiplies the costs by the number of affected issuers. However, because Barrick Gold and ExxonMobil are very large issuers and their compliance costs may not be representative of significantly smaller issuers, we apply these costs to all potentially affected issuers as a percentage of total assets. This allows for the compliance cost estimate for each potentially affected issuer to vary by their size, consistent with our expectation that larger issuers will face higher compliance costs. For example, we expect larger, multinational issuers to need more complex payment tracking systems compared to smaller, single country based issuers. This approach is consistent with the method used in the 2012 Adopting Release, where we estimated the initial compliance costs to be between 0.002% and 0.021% of total assets.[624]

We calculate the average total assets of the 425 potentially affected issuers to be approximately $6.4 billion.[625] Applying the ratio of initial compliance costs to total assets (0.002%) from Barrick Gold, we estimate the lower bound of total initial compliance costs for all issuers to be $54.73 million (0.002% * $6,439,369,000 * 425). Applying the ratio of initial compliance costs to total assets (0.021%) from ExxonMobil, we estimate the upper bound of total initial compliance costs for all issuers to be $574.7 million (0.021% * $6,439,369,000 * 425). The table below summarizes the upper and lower bound of total initial compliance costs under the assumption that compliance costs vary according to the issuer's size.

Average issuer initial compliance costs assuming no fixed costs		Calculation
Average 2015 total assets of all affected issuers	$6,439,369,000	
Average initial compliance costs per issuer using Barrick Gold percentage of total assets (lower bound)	128,787	$6,439,369,000*0.002%
Total initial compliance costs using Barrick Gold (lower bound)	54,734,640	128,787*425
Average initial compliance costs per issuer using ExxonMobil's percentage of total assets (upper bound)	1,352,268	6,439,369,000*0.021%
Total initial compliance costs using ExxonMobil (upper bound)	574,713,700	1,352,268*425

We also recognize that it is possible that some compliance costs may not scale by issuer size and as a result smaller issuers may be subject to certain fixed costs that do not vary with the size of the issuers' operations. While commenters did not provide any information on what fraction of the initial compliance costs would be fixed versus variable, we assume that fixed costs are equal to $500,000—the lower of the two compliance cost estimates provided by commenters.[626] To find the

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under the final rules even if that issuer is not subsequently required to file an annual report on Form SD. To the extent that excluded issuers incur such costs, our estimate may understate the aggregate compliance costs associated with the final rules.

[620] We note, in particular, that Barrick Gold is incorporated in Canada and listed on the Toronto Stock Exchange and thus is subject to substantially similar foreign disclosure requirements under existing international transparency regimes.

[621] *See* Section II.D of the Proposing Release.

[622] In this regard, we note that some affected issuers, even if they are not subject to foreign disclosure requirements, might have subsidiaries or other entities under their control that are subject to such requirements. These issuers will thus face lower compliance costs because they will already have incurred some of these costs through such subsidiaries and other controlled entities.

[623] Barrick Gold estimated that it would require 500 hours for initial changes to internal books and records and processes and 500 hours for ongoing compliance costs. At an hourly rate of $400, this amounts to $400,000 (1,000 hours * $400) for hourly compliance costs. Barrick Gold also estimated that it would cost $100,000 for initial IT/consulting and travel costs, for a total initial compliance cost of $500,000. A similar analysis by ExxonMobil estimated their initial compliance costs to be $50 million. *See* 2012 Adopting Release, Section III.D for details.

[624] *See* 2012 Adopting Release at Section III.D for details (the approach we use here is referred to as Method 1 in that release). In the 2012 Adopting Release, we also used another method (referred to as Method 2) to estimate compliance costs. With Method 2, we first estimated the compliance costs for small and large issuers (as determined by market capitalization) using the same assumptions as in Method 1 that compliance costs are a constant fraction of issuer's total assets (*i.e.,* that all costs are variable and there is no fixed component to the costs) and then aggregated the compliance costs for all issuers. Although this approach was intended to provide limited insight into any differential cost impacts on small versus large issuers, it did not separate fixed and variable cost components of the total compliance costs. Therefore, it did not allow us to apply a differential cost structure to small and large issuers. In addition, because of poor data availability and data quality on market capitalization for small and foreign issuers, the Method 2 approach may yield less accurate estimates than the approach we use in this release (on the other hand, Method 1 could be properly applied because we collected total assets data for all affected issuers). As a consequence, we now believe that the disaggregation and subsequent aggregation of small and large issuer cost estimates does not provide additional insights into the difference in cost structure for small versus large issuers and any effects of this difference on the aggregate costs. Consequently, we have used only one estimation approach in this analysis. As discussed below, however, we do believe that there is a fixed component to the compliance costs which could potentially have a differential impact on small issuers, and we have expanded the Method 1 approach to allow for a fixed costs component in the cost structure. We requested comments about the breakdown of the compliance costs into the fixed and variable components to enable us to estimate such impact better, but we have not received any comments quantifying such breakdown.

[625] For the 425 potentially affected issuers, we collected their total assets for the fiscal year that corresponds to their Exchange Act annual reports for 2015 from XBRL exhibits that accompany issuers' annual reports on EDGAR and from Compustat. If these two data sources varied on an issuer's total assets, we used the higher of the two values. For the remaining issuers that do not have total assets data from either of these two data sources, we manually collected the data on total assets from their filings. We then calculated the average of those total assets across all issuers that have the data.

[626] Assuming that both estimates are accurate, the fixed costs cannot be higher than the lower of the

lower and upper bound estimates of compliance costs in this case, we assume that each issuer's costs are the maximum between the fixed costs of $500,000 and, respectively, the lower bound (0.002% of total assets) or the upper bound (0.021% of total assets) of the variable costs. Applying these lower and upper bounds to each issuer and summing across all issuers, we find that the lower bound estimate is $239 million (or, on average, $0.56 million per issuer) and the upper bound estimate is $700 million (or, on average, $1.65 million per issuer).

The table below summarizes the upper and lower bound of total initial compliance costs under two fixed costs assumptions.[627] We note that our upper bound estimates are consistent with two commenters' qualitative estimates of initial implementation costs[628] and the initial costs estimate from another commenter[629] is within our range for the no-fixed costs case. We also note that, if the actual fixed costs component is between $0 and $500,000, the lower and upper bounds of compliance costs estimates would be between our estimates for the two opposite cases.

	Initial compliance costs assuming no fixed costs		Initial compliance costs assuming fixed costs of $500,000	
	Costs for an average issuer	Total costs	Costs for an average issuer	Total costs
Lower bound	$128,787	$54,734,640	$561,932	$238,820,900
Upper bound	1,352,268	74,713,700	1,547,437	700,160,800

We acknowledge significant limitations on our analysis that may result in the actual costs being significantly lower. First, the analysis is limited to two large issuers' estimates from two different industries, mining and oil and gas, and the estimates may not accurately reflect the initial compliance costs of all affected issuers. Second, the commenters' estimates were generated based on our initial proposal and they do not reflect the final rules or the international transparency regimes that subsequently have been adopted by other jurisdictions.[630]

We also acknowledge certain limitations on our analysis that could potentially cause the cost to be higher than our estimates. First, we assume that the variable part of the compliance costs is a constant fraction of total assets, but the dependence of costs on issuer size might not be linear (*e.g.*, costs could grow disproportionally faster than issuer assets). Second, commenters mentioned other potential compliance costs not necessarily captured in this discussion of compliance costs.[631]

In spite of these limitations, we consider our quantitative approach to estimate compliance costs to be appropriate and supported by the limited data we have. During the comment period after the Proposing Release, no commenters specifically critiqued this method or the derived quantitative estimates or provided additional data that we could use to update or refine these estimates. Only one commenter supplied an alternative approach and its point estimates are within the range of our estimates for both initial and ongoing direct compliance costs.[632]

We estimate ongoing compliance costs using the same method under the assumptions of no fixed costs and fixed costs of $200,000 per year (as explained below). In response to the 2010 Proposing Release, we received quantitative information from three commenters—Rio Tinto, National Mining Association, and Barrick Gold—that we used in the analysis.[633] As in the 2012 Adopting Release, we use these three comments to estimate the ongoing compliance costs as a percentage of total assets to be 0.003%, 0.02%, and 0.0008%, respectively, and the average ongoing compliance costs to be 0.0079% of total assets.[634] For the no fixed costs

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two estimates. We have chosen to use the highest possible value of fixed costs satisfying this restriction to encompass the widest range of cost estimates. We have not received any comment letters with estimates of the fixed cost component of the initial compliance costs or addressing the estimates presented in the Proposing Release.

[627] The total estimated compliance cost for PRA purposes is $79,302,480. *See* Section IV below. The compliance costs for PRA purposes are encompassed in the total estimated compliance costs for issuers. As discussed in detail below, our PRA estimate includes costs related to tracking and collecting information about different types of payments across projects, governments, countries, subsidiaries, and other controlled entities. The estimated costs for PRA purposes are calculated by treating compliance costs as fixed costs and by only monetizing costs associated with outside professional services. Therefore, despite using similar inputs for calculating these costs, the PRA estimate differs from the lower and upper bounds calculated above.

[628] *See* letters from API 1 (pre-proposal) ("Total industry costs just for the initial implementation could amount to hundreds of millions of dollars even assuming a favorable final decision on audit requirements and reasonable application of accepted materiality concepts.") and ExxonMobil 1 (pre-proposal).

[629] *See* letter from Claigan (estimating of the total initial compliance costs as $181,347,000).

[630] *See, e.g.*, Section II.D and note 622 and accompanying text.

[631] Those could include, for example, costs associated with the termination of existing agreements in countries with laws that prohibit the type of disclosure mandated by the final rules, costs of decreased ability to bid for projects in such countries in the future, or costs of decreased competitiveness with respect to non-reporting entities. Commenters generally did not provide estimates of such costs. As discussed further below, we have attempted to estimate the costs associated with potential foreign law prohibitions on providing the required disclosure.

[632] *See* letter from Claigan and notes 629 above and 636 below. This commenter's approach was not critiqued or refined by other commenters during the extended comment rebuttal period.

[633] *See* letters from Barrick Gold (pre-proposal); Rio Tinto (pre-proposal); and NMA 2 (pre-proposal). We apply the same caveat as in the initial compliance cost estimates above, namely, that these cost estimates were provided by the commenters during the comment period after the 2010 Proposing Release and were based on policy choices made in that proposal. Discretionary choices reflected in the final rules and recent international developments could significantly lower the cost estimates. We also note that both Barrick Gold (incorporated in Canada and listed on the Toronto Stock Exchange) and Rio Tinto (incorporated in the United Kingdom and listed on the London Stock Exchange) are subject to substantially similar disclosure requirements under existing international transparency regimes.

[634] We estimate the cost percentages as follows: Rio Tinto estimated that it would take between 5,000 and 10,000 hours per year to comply with the requirements, for a total ongoing compliance cost of between $2 million (5,000*$400) and $4 million (10,000*$400). We use the midpoint of their estimate, $3 million, as their expected ongoing compliance cost. The National Mining Association (NMA), which represents the mining industry, estimated that ongoing compliance costs would be 10 times our initial estimate from the 2010 Proposing Release, although it did not state specifically the number to which it referred. We believe NMA was referring to our proposed estimate of $30,000. Although this is the dollar figure for total costs, NMA referred to it when providing an estimate of ongoing costs, so we do the same here, which would result in $300,000 (10*$30,000). Finally, Barrick Gold estimated that it would take 500 hours per year to comply with the requirements, or $200,000 (500*$400) per year. As with the initial compliance costs, we calculate the ongoing compliance cost as a percentage of total assets. Rio Tinto's total assets as of the end of fiscal year 2009 were approximately $97 billion and their estimated ongoing compliance costs as a percentage of assets is 0.003% ($3,000,000/$97,236,000,000).

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case, we take the average total assets for all affected issuers, $6,439,369,000, and multiply it by a constant fraction (either the lower bound of 0.0008%, the average of 0.0079%, or the upper bound of 0.02%) of total assets and the number of affected companies (425) to get the total lower bound, the average, and the upper bound of the annual ongoing compliance costs estimates.

Similar to our estimates of the initial costs, we then consider fixed costs equal to the lowest of three estimates given by the commenters, the Barrick Gold estimate of $200,000 per year.[635] To find the lower and upper bound estimates, we assume that each issuer's costs are the maximum between the fixed costs of $200,000 and either the lower bound (0.0008% of total assets) or the upper bound (0.02% of total assets) of the variable costs, respectively. Applying these lower and upper bounds to each issuer and summing across all issuers, we find that the lower bound estimate is $96 million per year (or, on average, $0.22 million per issuer per year) and the upper bound estimate is $591 million per year (or, on average, $1.39 million per issuer per year). Our estimates are summarized in the following table. We note that the ongoing costs estimate from one commenter[636] is within our range of the no-fixed costs case. We also note that, if the actual fixed costs component is between $0 and $200,000, the lower and upper bounds of compliance costs estimates would be between our lower and upper bounds estimates for the two opposite fixed costs cases.

	Annual ongoing compliance costs under the assumption of no fixed costs		Annual ongoing compliance costs under the assumption of fixed costs of $200,000	
	Costs for an average issuer	Total costs	Costs for an average issuer	Total costs
Lower bound	$51,515	$21,893,860	$224,773	$95,528,370
Average	508,710	216,201,800	628,380	267,061,300
Upper bound	1,287,874	547,346,400	1,389,882	590,699,900

As noted above, we expect that the initial and ongoing compliance costs associated with the final rules are likely to be greater for larger, multinational issuers as compared to smaller, single country based issuers, as larger issuers would likely need more complex systems to track and report the required information. However, to the extent there is a significant fixed component to the final rules' overall compliance costs, such costs could be disproportionately burdensome for smaller reporting companies. In this case, the final rules could give rise to competitive disadvantages for these smaller issuers and could provide incentive for these issuers to consider exiting public capital markets to avoid reporting requirements (possibly incurring a higher cost of capital and potentially limited access to capital in the future). We estimate that approximately 43% of affected issuers are smaller reporting companies.[637] Nevertheless, given the fact that smaller issuers constitute a significant portion of the public reporting companies making resource extraction payments, exempting these issuers from the final rules could significantly diminish the expected benefits of the required disclosure.

c. Indirect Costs and Competitive Effects

In addition to direct compliance costs, we anticipate that the statutory reporting requirements could result in significant indirect effects. Issuers that have a reporting obligation under Section 13(q) could be at a competitive disadvantage compared to private companies and foreign companies that are not subject to the reporting requirements of the U.S. federal securities laws and therefore do not have such an obligation. For example, such competitive disadvantage could result from, among other things, any preference by the government of the host country to avoid disclosure of covered payment information, or any ability of market participants to use the information disclosed by reporting issuers to derive contract terms, reserve data, or other confidential information. The Commission lacks sufficient data or a sufficiently reliable methodology to compare quantitatively total benefits against total costs, and no commenter has provided us with data regarding competitive effects or suggested a methodology that would allow us to engage in an empirical evaluation.

Industry commenters on the 2010 Proposing Release stated that confidential production and reserve data can be derived by competitors or other interested persons with industry knowledge by extrapolating from the payment information required to be disclosed.[638] Other commenters asserted, however, that such extrapolation is not possible or that such information is readily available from certain commercial databases. These commenters stated that information of the type required to be disclosed by Section 13(q) therefore would not confer a competitive advantage on industry participants not subject to such disclosure requirements.[639] Another commenter

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We calculated the average total assets of the mining industry to be $1.5 billion, and using NMA's estimated ongoing compliance costs, we estimate ongoing compliance costs as a percentage of assets to be 0.02% ($300,000/$1,515,000,000). Barrick Gold's total assets as of the end of fiscal year 2009 were approximately $25 billion and their estimated ongoing compliance costs as a percentage of assets is 0.0008% ($200,000/$25,075,000,000). *See* 2012 Adopting Release at Section III.D for details.

[635] Similarly to the initial compliance costs, assuming that both estimates are accurate, the fixed costs cannot be higher than the lowest of the estimates. We have chosen to use the highest possible value of fixed costs satisfying this restriction to encompass the widest range of cost estimates. We have not received any comment letters with estimates of the fixed cost component of the ongoing compliance costs or addressing the estimates presented in the Proposing Release.

[636] *See* letter from Claigan (estimating the total ongoing compliance costs as $73,747,875).

[637] As discussed in this section above, our estimate of the number of affected issuers already excludes 138 issuers that are shell companies or whose reported revenues and net cash flows from investing activities suggest that they are unlikely to make payments above the de minimis threshold. If we apply a significantly higher threshold ($250,000, $500,000, $750,000, or $1,000,000) to revenues and cash flows from investing to estimate the number of such issuers, we would exclude a slightly higher number of issuers from our cost estimates (162, 176, 191, or 203, respectively). Nonetheless, for the reasons described above, we believe that we have set the de minimis threshold at an appropriate level. *See* also Section II.C above and Section II.C.2 of the Proposing Release.

[638] *See* letters from API 1 (pre-proposal); ExxonMobil 1 (pre-proposal); and RDS 2 (pre-proposal).

[639] *See* letters from PWYP 1 (pre-proposal) and Oxfam 1 (pre-proposal).

prior to the Proposing Release expressed the view that project level reporting will not disclose confidential information of affected issuers or result in competitive disadvantage for such issuers relative to either owners of natural resources or to competitive resource producers, including state enterprises, who would be otherwise unencumbered by such reporting requirements.[640] Commenters on the Proposing Release were also split in their opinion on the competitive effect of payment information disclosure, asserting views similar to those described above.[641] Whatever the effect, any competitive impact arising from Section 13(q)'s mandated disclosures should be minimal in those jurisdictions in which payment information of the types covered by Section 13(q) is already publicly available.[642] In addition, any competitive impact should be substantially reduced to the extent that other jurisdictions, such as the European Union and Canada, have adopted laws that require disclosure similar to the disclosure required by Section 13(q) and the final rules.[643] We note, however, that if commenters are accurate in their assessment of the competitive effects arising from such disclosure requirements, some U.S. issuers that are not subject to the EU Directives or other international disclosure regimes might lose some of the competitive advantage they otherwise would enjoy from not being obligated to disclose their resource extraction payments.

To the extent that the requirement to disclose payment information does impose a competitive disadvantage on an issuer, the issuer could be motivated to sell assets affected by such competitive disadvantage at a price that does not fully reflect the value of such assets absent such competitive impact.[644] One commenter on the 2010 Proposing Release stated that tens of billions of dollars of capital investments could potentially be put at risk if issuers were required to disclose, pursuant to the final rules, information prohibited by a host country's laws or regulations.[645] Additionally, according to commenters, resource extraction issuers operating in countries that prohibit, or could in the future prohibit, the disclosure required under the proposed rules could bear substantial costs.[646] As discussed below, commenters have presented conflicting positions and representations concerning the prevalence and scope of such foreign law prohibitions, with some commenters on the Proposing Release observing that issuers filing in certain foreign jurisdictions are providing payment disclosure in respect of countries that allegedly prohibit disclosure.[647] In the event that such foreign law prohibitions exist, or are adopted in the future, pursuant to our existing Exchange Act authority, we will consider requests for exemptive relief on a case-by-case basis and may grant such relief, if and when warranted. The economic implications of providing or not providing such relief are discussed below in Section III.C.1.

Addressing other potential costs, one commenter on the 2010 Proposing Release referred to a potential economic loss borne by shareholders, without quantifying such loss, which the commenter believed could result from highly disaggregated public disclosure of competitively sensitive information causing competitive harm.[648] The commenter also noted resource extraction issuers could suffer competitive harm because they could be excluded from many future projects altogether. The same commenter also noted that because energy underlies every aspect of the economy, these negative impacts could potentially have repercussions well beyond resource extraction issuers.[649]

Some commenters on the 2010 Proposing Release suggested that we permit issuers to submit payment data confidentially to the Commission and make public only an aggregated compilation of the information.[650] The commenters suggesting that the Commission make public only a compilation of information stated that such an approach would address many of their concerns about the disclosure of commercially sensitive or legally prohibited information and would significantly mitigate the costs of the mandatory disclosure under Section 13(q). One commenter on the Proposing Release made a similar suggestion.[651] As noted above, we did not permit confidential submissions in the 2012 Rules, and the current final rules are generally consistent with that approach. As a result, the final rules require public disclosure of the payment information. We note that in situations involving more than one payment, the information would be aggregated by payment type, government, and/or project, which may limit the ability of competitors to use the publicly disclosed information to their advantage. Also, a company can combine more than one contract into a project, which may further limit the ability of competitors to use the information. Further, we are providing a limited exemption for payments in connection with exploratory activities, which should further reduce the potential competitive effects that might result from disclosure of payment information.[652] For other situations of potential substantial competitive harm, we will consider applications for exemptive relief from the proposed disclosure requirements on a case-by-case basis and may grant such relief, if and when warranted (similar to our approach with potential foreign law prohibitions).[653] In opting to provide a categorical exemption for new exploratory operations but to rely on case-by-case exemptive relief for potential competitive harms associated with ongoing projects, we credit the position advanced by the API that the payment terms of older contracts are generally publicly known (even if not technically disclosed).[654] Consequently, the disclosure of payment information relating to these projects is less likely to produce competitive harm than payments relating to, for example, exploratory activities.

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[640] *See* letter from Conrad (pre-proposal).

[641] *See* letters from API 1, ExxonMobil 1, PWYP–US 1, Oxfam 1.

[642] In this regard, we note that one commenter provided several examples of countries in which payments are publicly disclosed on a lease or concession level. *See* letter from PWYP 3.

[643] One commenter suggested that if both the United States and European Union implement disclosure requirements regarding payments to governments "around 90% of the world's extractive companies will be covered by the rules." *See* letter from Arlene McCarthy (Aug. 10, 2012) (Ms. McCarthy is a member of the European Parliament and the parliamentary draftsperson on the EU transparency rules for the extractive sector).

[644] For example, a study on divestitures of assets find that issuers that undertake voluntary divestitures have positive stock price reactions, but also finds that issuers forced to divest assets due to action undertaken by the antitrust authorities suffer a decrease in shareholder value. *See* Kenneth J. Boudreaux, "Divestiture and Share Price." *Journal of Financial and Quantitative Analysis* 10 (Sept. 1975), 619–26. *See also*, G. Hite and J. Owers. "Security Price Reactions around Corporate Spin-Off Announcements." *Journal of Financial Economics* 12 (Dec. 1983), 409–36 (finding that issuers spinning off assets because of legal/regulatory difficulties experience negative stock returns).

[645] *See* letter from RDS 4 (pre-proposal).

[646] *See* Section II.I.2 above.

[647] *See* notes 379 and 402 above.

[648] *See* letter from API 1 (pre-proposal).

[649] *See* id.

[650] *See* Section II.G.2 of the Proposing Release.

[651] *See* letter from API 1.

[652] This exemption would not significantly frustrate the transparency goals of the final rules. An issuer that would rely on the exemption for its payments made in connection with exploratory activities would have to disclose such payment information in its Form SD filing for the fiscal year following the fiscal year in which the payment was made. *See* Section II.I.3 for details.

[653] *See* Section II.I above.

[654] *See* API 1.

As noted above, the cost of compliance with this provision would be primarily borne by the issuer thus potentially diverting capital away from other productive opportunities and resulting in a loss of allocative efficiency.[655] Such effects may be partially offset over time if increased transparency of resource extraction payments reduces corrupt practices by governments of resource-rich countries and in turn helps promote improved economic development and higher economic growth in those countries. In this regard, as discussed above in Section III.B.1, a number of economic studies have shown that reducing corruption can help promote higher economic growth through more private investments, better deployment of human capital, and political stability.[656]

C. Potential Effects Resulting From Specific Implementation Choices

As discussed in detail in Section II, the Proposing Release specifically addressed matters identified in the U.S. District Court for the District of Columbia's decision in the API Lawsuit. In developing the final rules, in addition to those matters, we have also considered relevant international developments, input from staff consultations with other U.S. Government agencies, and the public comments that we have received. We discuss below the significant choices that we are making to implement the statute and the associated benefits and costs of those choices. We are unable to quantify the impact of each of the choices discussed below with precision because reliable, empirical evidence about the effects is not readily available to the Commission and commenters have not provided us with empirical evidence relating to these various choices.

1. Exemption from Compliance

Absent potential exemptive relief, resource extraction issuers operating in countries that prohibit, or may in the future prohibit, the disclosure required under Section 13(q) could bear substantial costs.[657] Such costs could arise if issuers have to choose between ceasing operations in certain countries or violating local law, or if the country's laws have the effect of preventing them from participating in future projects. Some commenters on the 2010 Proposing Release asserted that four countries have such laws.[658] Other commenters disputed the assertion that there are foreign laws that specifically prohibit disclosure of payment information.[659] After reviewing the comment letters on the Proposing Release, we note that some commenters continue to assert that at least two countries—Qatar and China—prohibit the required disclosures whereas commenters no longer assert that two other countries mentioned in earlier comment letters—Angola and Cameroon—prohibit the disclosure.[660] Although we are not making any final determinations at this stage, as discussed above, we anticipate obtaining more information about companies' experiences with the disclosures under the EU Directives and ESTMA in the near term, which should assist the Commission in deciding whether any type of case-by-case exemptive relief is appropriate before the first reports are due under the final rules in two years.

To the extent that such prohibitions exist and are enforced without any type of waiver, affected issuers could suffer substantial losses if they have to terminate their operations and redeploy or dispose of their assets in the particular foreign jurisdiction. These losses would be magnified if an issuer cannot redeploy the assets in question easily, or if it has to sell them at a steep discount (a fire sale). Even if the assets could be easily redeployed, an issuer could suffer opportunity costs if they are redeployed to projects with inferior rates of return. In the 2012 Adopting Release we estimated that such losses could amount to billions of dollars. One commenter on the Proposing Release also asserted that such losses could be in the tens of billions of dollars.[661]

In addition to the costs described above, a foreign private issuer with operations in a country that prohibits disclosure of covered payments, or a foreign issuer that is domiciled in such country, might face different types of costs. For example, in these circumstances, an issuer might decide it is necessary to delist from an exchange in the United States, deregister, and cease reporting with the Commission,[662] thus incurring a higher cost of capital and potentially limited access to capital in the future. Based on our experience with issuers and the securities markets, we believe this is highly unlikely given that, at least for larger resource extraction issuers, they generally seek access to capital through publicly-traded securities markets and many of the major foreign securities exchanges on which a resource extraction issuer might seek to trade its securities are now subject to laws that are substantially similar to the final rules. Nonetheless, we acknowledge that should this occur, shareholders, including U.S. shareholders, might suffer an economic and informational loss if an issuer decides it is necessary to deregister and cease reporting under the Exchange Act in the United States as a result of the final rules.

We believe that there are a number of factors that may serve to diminish the likelihood that, to the extent that there are or will be foreign laws that prohibit the required disclosures, such laws would be retained or adopted or, if retained or adopted, may serve to mitigate the costs and competitive burdens arising from their impact. For example, the widening global influence of the EITI and the recent trend of other jurisdictions to promote transparency, including listing requirements adopted by the Hong Kong Stock Exchange[663] and the requirements adopted pursuant to the EU Directives and ESTMA, may discourage governments in resource-rich countries from retaining or adopting prohibitions on payment disclosure. Resource extraction issuers concerned that disclosure required by Section 13(q) may be prohibited in a given host country may also be able to seek authorization from the host country to disclose such information.[664] Commenters did not provide estimates of the cost that might be incurred to seek such an authorization, and we are unaware of any probative data.

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[655] *See* letter from Chevron. *See also* letter from Chairman Bachus and Chairman Miller. As discussed above in note 615, there is some uncertainty regarding who would bear the ultimate costs of compliance. Regardless of who bears the majority of the compliance costs, we believe that the effects on allocative efficiency and capital flows would likely be similar.

[656] *See* note 561 above and accompanying text.

[657] *See* Section II.I.2 above.

[658] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal) (mentioning Angola, Cameroon, China, and Qatar). *See also* letter from RDS 2 (pre-proposal) (mentioning Cameroon, China, and Qatar).

[659] *See* notes 379 and 402 above.

[660] *See* letter from API 1.

[661] *See* letters from ExxonMobil 1 and ExxonMobil 2.

[662] *See* letters from Branden Carl Berns (Dec. 7, 2011) ("Berns (pre-proposal)") and API 1.

[663] *See* Proposing Release, n.70.

[664] *See* letter from Oxfam-ERI (stating that "Qatar government's Model Production Sharing Agreement (PSA) contains a carveout clause allowing a party to disclose any information that might otherwise be deemed confidential, when required by applicable laws and regulations. In the absence of express prohibitions on disclosure, the terms of this contract control confidentiality of information related to each project"). The legal opinions submitted by Royal Dutch Shell with its pre-proposal comment letter also indicate that disclosure of otherwise restricted information may be authorized by government authorities in Cameroon and China, respectively. *See* letter from RDS 2 (pre-proposal).

In addition, these potential costs could be substantially mitigated under the final rules. We intend to consider using our existing authority under the Exchange Act to provide exemptive relief on a case-by-case basis, if and when warranted, upon the request of a resource extraction issuer.[665] As mentioned above, we believe that a case-by-case approach to exemptive relief is preferable to either including within the final rules a blanket exemption where foreign law prohibits disclosure (or for any other reason) or providing no exemptions and no avenue for exemptive relief under this or other circumstances. This is particularly so given the increasing uncertainty about the existence and scope of such laws and the likelihood that the Commission will have a more informed basis to assess the need for exemptive relief as more companies begin to report under the EU Directives and ESTMA. The final approach should significantly decrease compliance and economic costs to the extent that issuers are able to demonstrate that an exemption where host country laws prohibit disclosure is warranted. Indeed, assuming such laws exist and that the Commission determines to grant an exemption from the final rules, this approach could potentially save affected issuers billions of dollars in compliance and economic costs.[666]

An alternative to using our exemptive authority on a case-by-case basis would be to provide an exemption where specific countries have a law prohibiting the required disclosure. Although a blanket exemption could reduce potential economic costs (*e.g.,* costs of relocating assets) and compliance costs (*e.g.,* costs associated with applying for the exemption) for issuers if they are subject to foreign law prohibitions on disclosure, it could create a stronger incentive for host countries that want to prevent transparency to pass laws that prohibit such disclosure, potentially undermining the purpose of Section 13(q) to compel disclosure in foreign countries that have failed to voluntarily do so.[667] It also would remove any incentive for issuers to diligently negotiate with host countries for permission to make the required disclosures. Furthermore, it would make it more difficult to address any material changes over time in the laws of the relevant foreign countries, thereby resulting in an outdated blanket exemption. By contrast, the tailored case-by-case consideration of exemptions we intend to pursue will provide a more flexible and targeted mechanism for the Commission to address potential cost concerns while minimizing incentives for host countries to enact laws prohibiting disclosure.[668]

As discussed above, host country laws that prohibit the type of disclosure required under the final rules could lead to significant additional economic costs that are not captured by the compliance cost estimates in Section III.B.2.b. We believe that considering exemptive relief from the disclosure requirements on a case-by-case basis, as circumstances warrant, may substantially mitigate such costs. However, we acknowledge that, if this relief is not provided, issuers could potentially incur costs associated with the conflict between our requirements and those foreign law prohibitions. Below, we have attempted, to the extent possible, to assess the magnitude of the potential costs if such laws exist and if exemptive relief is not granted. Although we discuss the potential costs below for completeness, it is not clear that these costs, in fact, will be incurred by issuers in light of the present uncertainty regarding the existence and scope of such foreign laws and the fact that we intend to consider the use of our exemptive authority where investor interests would be jeopardized with little accompanying benefit from the specific disclosure.[669] Accordingly, the magnitude of the potential costs outlined below should not be viewed as necessarily indicative of the likely or expected costs of this aspect of the final rules.

We base our analysis on the two countries that some commenters continue to assert have versions of such laws.[670] We searched (through a text search in the EDGAR system) the Forms 10–K, 40–F, and 20–F of affected issuers for calendar year 2015 for any mention of China or Qatar. We found that, out of 425 potentially affected issuers, 150 mentioned one of these two countries. However, only 53 of them described any activity in one of these two countries and 97 mentioned these countries for other, unrelated reasons. An examination of these 53 filings indicates that most filings did not provide detailed information on the extent of issuers' operations in these countries.[671] Thus, we are unable to determine the total amount of capital that could be lost in these countries if the information required to be disclosed under the final rules is, in fact, prohibited by laws or regulations and exemptive relief is not provided.

We can, however, assess if the costs of withdrawing from these two countries are in line with some commenters' estimates of tens of billions of dollars provided on the Proposing Release.[672] To do this, we first estimate the market value of assets that an issuer currently owns in a

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[665] *See* discussion in Section II.I above.

[666] We note, however, that in addition to reducing costs, granting an exemption might diminish some of the benefits of enhanced transparency as well.

[667] *See, e.g.,* 156 Cong. Rec. S3815 (May 17, 2010) (Statement of Senator Cardin) ("We currently have a voluntary international standard for promoting transparency. . . . But too many countries and too many companies remain outside this voluntary system."). A blanket exemption would incentivize host countries that want to prevent transparency to enact laws prohibiting the disclosure without suffering the cost of decreasing the number of potential bidders on—and competition for—projects within their jurisdictions, and thus without the cost of decreasing the potential value realized to the host country from awarding a contract. We note that one commenter on the Proposing Release stated that we had failed to explain why a case-by-case exemptive approach would not create the very same incentives. *See* letter from API 1. We think this is unlikely, and the incentives to adopt such laws would be mitigated for the following reasons: a host country government would realize that there is greater uncertainty in exemption application approval; any exemptive relief granted under a case-by-case approach may be time limited or otherwise tailored, unlike a blanket exemption; and countries may realize that by adopting such a law, they are reducing the pool of potential competitors for in-country projects, as issuers may be reluctant to bid for contracts in countries that prohibit disclosure, if they do not know upfront that they will be granted an exemption. Thus, enacting laws prohibiting disclosure could reduce the number of potential bidders on resource extraction projects within host countries jurisdictions and, due to possible costs and uncertainty of the exemption application, the bids on such projects would be lower.

[668] Although not providing a blanket exemption could potentially discourage some companies from listing on U.S. exchanges, the advantage to these companies from being outside of the final rules may be limited by the lack of exemptions under the EU Directives and ESTMA and the possibility that other jurisdictions in the future will adopt similar initiatives as the global focus on reducing corruption associated with resource extraction activities continues.

[669] No commenters provided us with data or analysis to assist in assessing the potential costs that could arise from foreign law prohibitions on disclosure. We note that we anticipate considering the specific potential costs that an issuer would experience if a foreign law prohibition exists when we consider the issuer's exemptive application, provided the issuer produces documentation to credibly support those potential costs.

[670] *See* notes 658, 659, and 660 at the beginning of this section.

[671] We note that some resource extraction issuers do not operate in these two countries and thus would not have any such information to disclose. Other issuers may have determined that they were not required to provide detailed information in their filings regarding their operations in these countries.

[672] *See* letters from ExxonMobil 1, ExxonMobil 2, and RDS 4 (pre-proposal). We note, however, that the Royal Dutch Shell estimate was submitted in response to the 2010 Proposing Release. In addition, Royal Dutch Shell is incorporated in the United Kingdom and listed on the London Stock Exchange and Euronext Amsterdam and thus is subject to substantially similar disclosure requirements under existing international transparency regimes.

country with such laws. We then discuss how the presence of various opportunities for the use of those assets by the issuer or another entity would affect the size of the issuer's potential losses. We also discuss how these losses would be affected if an issuer cannot redeploy the assets in question easily, or if it has to sell them at a steep discount (a fire sale). In order to estimate the market value of assets located in one of these countries, we use Compustat geographic segments data extracted from Exchange Act annual reports to find the fraction of book value of such assets in the issuer's total assets and assume that the market value of such assets is the same fraction of the issuer's total market value.[673]

One commenter suggested that our valuation analysis is flawed because it is based on a book value metric instead of a market value metric.[674] The commenter, however, erroneously states that we use book values to measure the value of an issuer's assets in these two countries. As stated above, we use book values only to determine what *fraction* an issuer's assets in China or Qatar are of that issuer's total assets. We then apply this fraction to an issuer's *market* value to determine the market value of such assets.

As we discuss above, we were able to identify a total of 53 issuers that indicated they are active in these countries (some operate in more than one country). The table below provides information from the 16 issuers, out of the 53 described above, that provide geographic segment data at the country level and that specifically identify the value of assets in one of these two countries.[675] We expect that the actions taken in response to any foreign law prohibition and the nature of costs that issuers might face would be different for issuers domiciled in the United States and in foreign jurisdictions; therefore, we consider these two types of filers separately.

Issuer	Form type	Domicile (business address)	Host country	Country assets ($ mil)	Total assets ($ mil)	Country assets fraction in total assets	Market value estimate of country assets ($ mil)
1	10–K	Foreign	China	23.4	23.4	100.0%	2.6
2	10–K	Foreign	China	193.6	193.6	100.0%	86.4
3	10–K	Foreign	China	22.1	22.1	100.0%	8.1
4	10–K	Foreign	China	9.6	9.6	100.0%	7.2
5	20–F	Foreign	China	12.9	12.9	100.0%	58.8
6	20–F	Foreign	China	8,967.0	21,451.5	41.8%	
7	20–F	Foreign	China	280,177.4	387,691.9	72.3%	
8	20–F	Foreign	China	19,225.9	31,046.6	61.9%	
9	10–K	U.S.	China	389.0	37,399.0	1.0%	288.5
10	10–K	U.S.	China	311.0	3,075.0	10.1%	294.3
11	10–K	U.S.	China	728.0	9,598.0	7.6%	389.3
12	10–K	U.S.	China	1,913.0	116,539.0	1.6%	1,518.9
13	10–K	U.S.	China	0.1	2.0	6.0%	1.7
14	10–K	U.S.	China	13.3	829.4	1.6%	21.8
15	10–K	U.S.	China	49.9	2,576.0	1.9%	33.7
16	10–K	U.S.	Qatar	2,605.0	56,259.0	4.6%	3,053.3

The magnitude of potential total loss of assets in the host countries is represented in the last column of the table, the estimated market value of country assets. For the eight issuers domiciled in the United States that have assets in one of these two host countries, the estimated total loss range is between $1.7 million and $3.1 billion, with a median loss of $291.4 million. The aggregate fraction of total assets that might be affected is 2.7%.[676] We note that these estimates apply only to issuers that have assets in one of the host countries.

As shown in the table above, eight issuers have a foreign address associated with their Form 10–K or 20–F filing. As we discussed above, issuers that are domiciled in foreign countries might face different types of costs than U.S.-based issuers. For example, they are more likely to decide it is necessary to delist from an exchange in the United States, deregister, and cease reporting with the Commission, thus incurring a higher cost of capital and potentially limited access to capital in the future, rather than to sell their assets abroad. Due to limited data availability, we cannot reliably quantify these costs.

Even though our analysis was limited to less than half of issuers that are active in these two countries, these estimates suggest that commenters' concerns about such host country laws potentially imposing billions of dollars of costs on affected issuers could be warranted, if such prohibitions exist, are not waived by the host country, and no exemptive relief from our rules is provided. Additional costs at that scale could have a significant impact on resource extraction issuers' profitability and competitive position. The analysis above assumes that a total loss of assets located in the host countries would occur. In a similar vein, one commenter suggested that any action by an issuer to obtain an exemption would likely represent a breach of the issuer's contractual obligation to the country and force the issuer potentially to suffer a total loss of its local operations.[677] In a more likely scenario, however, these issuers would be forced to sell their assets in the above-mentioned host countries at fire sale prices. Additionally, an issuer could redeploy these assets to other projects that would generate cash flows.

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[673] This approach assumes that valuation of assets of a firm is the same regardless of where these assets are geographically located. Not all of the assets located in these host countries might be related to resource extraction payments, which disclosure can trigger their sale or loss; however, we choose the conservative approach and err on the side of overestimating the losses.

[674] *See* letter from API 1 (Attachment B).

[675] As noted above, we identified 53 issuers that discussed their activities in at least one of the two countries, but only 16 of the issuers provided country-level geographic segment information for those countries that was specific enough to use in our analysis (some issuers may have determined that they were not required to provide detailed information in their filings and others might not have any assets in these countries). In the table, Country Assets are defined as either Long-lived Assets, Identifiable Total Assets, or Property, Plant & Equipment, whichever was disclosed; Country Assets Fraction in Total Assets is Country Assets/Total Assets; and Market Value Estimate of Country Assets is Country Assets Fraction in Total Assets * Company Market Value, where Company Market Value is calculated as Consolidated Company-Level Market Value of Common Equity + Total Debt + Preferred Stock Liquidating Value—Deferred Taxes and Investment Tax Credits if all these values were available. We were not able to identify the company-level market values for some issuers, and, thus, we were not able to determine their Market Value Estimate of Country Assets. All Compustat data is the latest annual data disclosed on or before the date of the issuer's 2015 Form 10–K or 20–F filing.

[676] Total assets of all U.S.-based firms located in these host countries divided by total worldwide assets of the same firms.

While we do not have data on fire sale prices for the industries of the affected issuers, economic studies on fire sales of real assets in other industries provide some estimates that may allow us to quantify the potential costs to affected issuers from having to sell assets at fire sale prices. For example, a study on the airline industry finds that planes sold by financially distressed airlines bring 10 to 20 percent lower prices than those sold by undistressed airlines.[678] Another study on aerospace plant closings finds that all groups of equipment sold for significant discounts relative to estimated replacement cost.[679] The discounts on machine tools, instruments, and miscellaneous equipment were estimated to be between 63 and 69 percent. The analysis also suggests that the most specialized equipment appears to have suffered substantially higher discounts than the least specialized equipment, which may be relevant to the extractive industry to the extent that a project would not have many potential alternative suitors should it need to be disposed of due to a conflict between the final rules and host country laws. Other studies provide estimates of fire sale discounts for forced house sales (about 3–7 percent for forced sales due to death or bankruptcy and about 27 percent for foreclosures)[680] and sales of stand-alone private firms and subsidiaries (15–30 percent relative to comparable public acquisition targets).[681] These estimates suggest a possible range for the fire sale discount from 3 to 69 percent.

Commenters did not provide any numerical estimates of the fire sale discounts that resource extraction issuers could potentially face. One commenter asserted that the range of fire sale discounts that the Commission presented in the Proposing Release was incorrect because it was based on industries that were very different from the resource extraction industry.[682] According to the commenter, the appropriate fire sale discount should be 100 percent because of the significant sunk-cost investments in the resource extraction industry that the commenter asserted are relationship-specific and transaction-specific and thus have little to no value outside such relationships or transactions. While we agree with the commenter that our numerical examples are based on industries that are different from the resource extraction industry, as we acknowledged in the Proposing Release, we do provide an estimate of a 100 percent fire sale discount as well, as reflected in the total loss estimate from above. Additionally, our understanding is that, in most production sharing contracts, the exploration and production company receives reimbursement via the cost recovery mechanism during the period of the contract, and ownership of the field equipment reverts to the host country upon termination of the contract.[683] Thus, even if the contract is terminated prematurely, an issuer may receive certain reimbursement for its sunk cost investments in the field equipment. Also, equipment installed in the field by one issuer can usually be reused by another issuer without removing it from the field. Given that the resource extraction industry is a competitive industry not only in the United States but also globally, it is likely that if an issuer has to dispose of its assets in one of these two countries there may be local or international buyers that that are not subject to the rule that find these assets valuable and are able to use them for the same purpose (*e.g.*, to extract oil) and hence are willing to bid up their price, which will result in fire sale discounts of less than 100 percent.

Despite the assertion by the same commenter that in the event of disclosure the issuers' assets are likely to be seized by locally-owned or government-owned enterprises, we believe such asset seizures may be unlikely given the negative effect on the country's reputation as a place to do business that they could generate as well as the fact that locally-owned or government-owned enterprises may not have the expertise and the technological know-how to efficiently manage these assets. Another commenter suggested that some resource extraction issuers sell whole or partial stakes in their ventures as a matter of course without violating a host country law or contractual provision.[684] According to this commenter, a sale under such circumstances could lead to a fire sale discount, but it is highly unlikely to bring about a total loss. The commenter also stated that issuers would likely be protected under bilateral investment treaties or covered by political risk insurance that could lower the size of the loss. Another commenter also stated that resource extraction issuers may have public or private insurance, or treaty-based or commercial arbitration mechanisms, which would allow them to recover some or all of their losses in the case of government interference with their assets.[685]

To understand how relevant these discounts are to the resource extraction issuers affected by the final rules, we examine the ease with which real assets could be disposed of in different industries. If the forced disposal of real assets is more easily facilitated in the resource extraction industries compared to other industries (*i.e.*, there is a more liquid market for those assets), then the lower range of the fire sale discounts will be more appropriate to estimate potential losses due to the foreign law prohibitions. We measure the ease with which issuers in a given industry could sell their assets by a liquidity index.[686] The index is defined as the ratio of the value of corporate control transactions[687] in a given year to the total book value of assets of firms in the industry for that year. We believe that this ratio captures the general liquidity of assets in an industry because it measures the volume of the type of transactions that companies rely on when divesting real assets. Additionally, one economic study finds that the liquidity of the market for corporate assets, as measured by the liquidity index, plays an important role in explaining assets disposals by companies.[688]

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[677] *See* letter from ExxonMobil 1.

[678] *See* Todd Pulvino 1998. "Do Fire-Sales Exist? An Empirical Study of Commercial Aircraft Transactions." *Journal of Finance,* 53(3): 939–78.

[679] *See* Ramey, V.A., Shapiro, M.D. 2001. "Displaced Capital: A Study of Aerospace Plant Closings." *Journal of Political Economy,* 109: 958–92.

[680] *See* Campbell, John Y., Stefano Giglio, and Parag Pathak 2011. "Forced Sales and House Prices." *American Economic Review,* 101: 2108–31.

[681] *See* Officer, M.S. 2007. "The Price of Corporate Liquidity: Acquisition Discounts for Unlisted Targets." *Journal of Financial Economics,* 83: 571–98.

[682] *See* letter from API 1 (Attachment B).

[683] *See, e.g.,* Brady, John, Charles Chang, Dennis R. Jennings, and Rich Shappard. Petroleum Accounting—Principles, Procedures, & Issues. PDI, 7th Edition, 2011, Chapter 25.

[684] *See* letter from Oxfam 1.

[685] *See* letter from PWYP–US 1.

[686] *See* Frederic Schlingemann, Rene Stulz, and Ralph Walkling 2002. "Divestitures and the Liquidity of the Market for Corporate Assets." *Journal of Financial Economics,* 64: 117–144. The index value is between 0 and 1. A higher value of the index for an industry indicates that this is an industry with a more liquid market for corporate assets and a firm in that industry would be able to sell its real assets easier and at smaller loss than a firm in an industry with a lower liquidity index.

[687] As corporate control transactions, we consider all completed or pending leveraged buyouts, tender offers, spinoffs, exchange offers, minority stake purchases, acquisitions of remaining interest, privatizations, and equity carve-outs of U.S. targets. We exclude buybacks (*e.g.,* repurchases and self-tenders) from the sample. Data on these transactions comes from Thomson Financial's Mergers & Acquisitions and New Issues databases. Data on the book value of total assets is taken from Compustat.

We note, however, that the index, as constructed, will also reflect the industry's typical financial leverage, not just the liquidity of its assets. To the extent that different industries have different leverages, these differences in leverage could explain some of the cross-industry variation of the index. Additionally, the index measures the ease with which ownership of assets is changed over the time period under consideration. Hence, the index is expected to adjust to intertemporal changes in the ease with which assets in a certain industry can be disposed of, which is important because it is well-established that control transactions tend to be cyclical in nature.[689]

We construct the index for all industries, identified by three-digit SIC codes. For each industry, after estimating the value of the index in each year during the period 2010–2014, we calculate the average over the five-year period. Several industries have a liquidity index greater than 1; in those cases we cap the index level at 1.

The table below presents summary statistics for the liquidity index for all industries and the resource extraction industries during the period 2010–2014.

	Index value
All other industries:	
Mean	0.11
Median	0.03
Top quartile	0.09
Bottom quartile	0.01
Industries with similar financial leverage:	
Mean	0.08
Median	0.02
Top quartile	0.10
Bottom quartile	0.01
Resource extraction issuers:	
Mean	0.02
Median	0.01

The results in the table show that the liquidity of real assets in the resource extraction industries is low (an average liquidity index of 0.02) compared with the liquidity in other industries (an average liquidity index of 0.11). That is, it is harder to dispose of assets in the extractive industries relative to other industries. In fact, the liquidity index of resource extraction industries is in the lowest quartile of the distribution of the index for all industries. As mentioned above, this could reflect the fact that resource extraction issuers have higher financial leverage than other industries. All other things being equal, higher financial leverage will result in a lower liquidity index. To control for the effects of financial leverage, we compare the liquidity index of resource extraction industries to that of industries with similar leverage.[690] As the results of this comparison show, resource extraction industries have lower liquidity index values even when compared to industries with similar levels of financial leverage: A median of 0.01 for the resource extraction industries compared to a median of 0.02 for industries with similar financial leverage.[691] This suggests that affected issuers may still experience difficulty in disposing of some of their real assets relative to other industries with similar leverage levels when a need arises. It should be noted, however, that the liquidity index estimates the liquidity of the real assets at the industry level, not at the level of a country with laws prohibiting disclosure. It is possible that in some of these countries the ability of an affected issuer to dispose of assets could be more or less constrained than that at the industry level.

One commenter criticized our use of the liquidity index based on the argument that it is constructed using U.S. data, with the U.S. being one of the most liquid markets in the world.[692] Our purpose, however, in using the index is to do a relative comparison: that is, to get a sense of whether the resource extraction industry is more or less liquid than other industries. We do not use the liquidity index to develop an absolute measure of liquidity in the resource extraction industry. Furthermore, our results from the analysis using the liquidity index are in line with the commenter's suggestions that this industry is relatively illiquid compared to other industries.

Because we lack data to construct the liquidity index at the country level, we cannot quantify the liquidity of the single-country market for real assets. The table below lists the number of corporate control transactions in each of the two countries under consideration from the period 2010–2014, broken down by type of industry.[693] As seen from the table, China is by far the more active market for corporate control transactions among the two countries. Although the number of relevant transactions gives some indication of how liquid the market in each country is, without knowing the size of the discounts and the types of companies involved in these deals (*e.g.*, small or large), we cannot conclusively say in which country the cost associated with fire sale prices would be lower. These costs would likely depend on country-level factors such as a country's regulatory framework governing such transactions (*e.g.*, how quickly a transaction can get approved), the degree of competition in the resource extraction industry, availability of capital (*e.g.*, availability and cost of debt and stock market valuations), and changes in currency exchange rates. For example, a recent study documents that companies from countries whose stock market has increased in value and whose currency has recently appreciated are more likely to be purchasers of corporate assets.[694] In a certain country, a more competitive resource extraction industry is likely to be associated with lower fire sale discounts.

Country	Number of transactions (% of all transactions)
China:	
Resource extraction industries	885 (6)
All other industries	14,304 (94)
Qatar:	
Resource extraction industries	5 (8)
All other industries	54 (92)

Given the lower liquidity of the market for the real assets of resource extraction issuers, we believe that the upper limit of the fire sale discount range would be more appropriate when estimating the fire sale prices at which affected issuers could dispose of their assets in countries with laws prohibiting disclosure, should such need arise. If we apply those discount percentages to the market value of the issuers' assets in these host countries, this would reduce our estimates of their potential losses. For U.S.-based issuers, if we apply the highest discount of 69 percent, the range of losses would be between $1.2 million and $2.1 billion, with a median loss of $201.1 million. If the true fire sale discounts in the countries with disclosure prohibition laws are lower than our highest estimate, the losses of affected issuers would be lower. In addition to the dollar costs, the process of disposing of assets could involve substantial time, which could further increase the total cost of the restructuring. We acknowledge, however, that the fire sale discount estimates are based on data from other industries that are very different from the industries of affected issuers. Thus, our estimates may not accurately reflect the true fire sale discounts that affected issuers could face.

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[688] *See* Frederic Schlingemann, Rene Stulz, and Ralph Walkling 2002. "Divestitures and the Liquidity of the Market for Corporate Assets." *Journal of Financial Economics*, 64: 117–144.

[689] Gregor Andrade, and Erik Stafford, 2004. "Investigating the economic role of mergers." *Journal of Corporate Finance* 10: 1–36.

[690] We first estimate the median market leverage of the resource extraction industries during the period 2010–2014. Market leverage is defined as the ratio Total debt/(Total debt + Market value of equity). We then classify as similar those industries whose median market leverage is within −/+ 10% of the median market leverage of the resource industries for the same time period. There are six industries that are similar to the resource extraction industries based on this criterion. Data on total debt and market value of equity comes from Compustat.

[691] We note that many factors may drive the choice of leverage within a given industry, and some of these factors may also affect the industry's liquidity index. Thus, the industries that have leverage that is similar to that of the resource extraction industries may be very different in some other aspects (*e.g.*, growth opportunities or intensity of competition) and that could explain the differences in their liquidity indices and the liquidity index of the resource extraction industries.

[692] *See* letter from API 1 (Attachment B).

[693] Corporate control transactions are defined as in footnote 687. Data on the transactions comes from Thomson Financial's Mergers & Acquisitions.

[694] *See* Isil Erel, Rose Liao, and Michael Weisbach 2012. "Determinants of Cross-Border Mergers and Acquisitions," *Journal of Finance* 67: 1045–82.

Alternatively, an issuer could redeploy these assets to other projects that would generate cash flows. If an issuer could redeploy these assets relatively quickly and without a significant cost to projects that generate similar rates of returns as those in the above-mentioned countries, then the issuer's loss from the presence of such host country laws would be minimal. The more difficult and costly it is for an issuer to do so, and the more difficult it is to find other projects with similar rates of return, the larger the issuer's losses would be. However, we do not have sufficient data to quantify more precisely the potential losses of issuers under those various circumstances. Likewise, if there are multiple potential buyers (*e.g.,* companies not subject to the final rules, the EU Directives, or ESTMA), and if the issuer could sell those assets to one such buyer, then the buyer might pay the fair market value for those assets, resulting in minimal to no loss for the issuer.

Overall, the results of our analysis are consistent with commenters' assertions that the presence of host country laws that prohibit the type of disclosure required under the final rules could be costly, although, as mentioned in the preceding paragraph, in some instances there may be mitigating factors that could decrease those costs. It is also possible that under certain circumstances affected issuers could lose 100 percent of their assets in a given country. The size of the potential loss to issuers would depend on the presence of other similar opportunities, third parties willing to buy the assets at fair-market values in the above-mentioned host countries, and the ability of issuers to avoid fire sales of these assets. Finally, as discussed at the beginning of this section, it is not clear that these costs, in fact, will be incurred by issuers in light of the present uncertainty over the existence and scope of such foreign law prohibitions and our intent to consider exemptive relief on a case-by-case basis.

2. Alternative Reporting

The final rules allow resource extraction issuers subject to a foreign jurisdiction's resource extraction payment disclosure requirements that we have determined are substantially similar to our own requirements to satisfy their submitting obligations by filing the report required by that foreign jurisdiction with the Commission. At the same time, we are recognizing the EU Directives, ESTMA, and the USEITI as "substantially similar" reporting regimes for purposes of this alternative reporting provision. This approach will significantly decrease compliance costs for issuers that are cross-listed or incorporated in these foreign jurisdictions. We estimated above that approximately 192 issuers will be subject to other regulatory regimes that may allow them to utilize this provision.[695] For these issuers, the costs associated with preparing and filing a Form SD should be negligible, although they will be required to format the data in interactive (XBRL) format before filing it with the Commission.

As an alternative, we could have decided not to adopt such a provision. Such an alternative would have increased the compliance costs for issuers that are subject to substantially similar foreign disclosure requirements. These issuers would have to comply with multiple disclosure regimes and bear compliance costs for each regime, although it is possible that the marginal costs for complying with an additional disclosure regime would not be high given the potential similarities that may exist between these reporting regimes and the final rules.

3. Definition of Control

Section 13(q) requires resource extraction issuers to disclose payments made by a subsidiary or entity under the control of the issuer. As discussed in Section II.D above, we are adopting rules that define the term "control" based on accounting principles. Alternatively, we could have used a definition based on Exchange Act Rule 12b–2 as in the 2012 Rules.[696] We believe that the approach we are adopting will be less costly for issuers to comply with because issuers are currently required to apply the definition on at least an annual basis for financial reporting purposes. While some commenters were concerned about the ability of an issuer to obtain sufficiently detailed payment information from proportionately consolidated entities or operations when it is not the operator of that venture, we note that the issuer would be able to rely on Exchange Act Rule 12b–21 to omit the information if, under existing contracts, the necessary payment information is unknown and not reasonably available.[697]

Using a definition based on Rule 12b–2 would require issuers to undertake additional steps beyond those currently required for financial reporting purposes.[698] Specifically, a resource extraction issuer would be required to make a factual determination as to whether it has control of an entity based on a consideration of all relevant facts and circumstances. Thus, this alternative would have required issuers to engage in a separate analysis of which entities are included within the scope of the required disclosures (apart from the consolidation determinations made for financial reporting purposes) and could have increased the compliance costs for issuers compared to the approach we are adopting.

In addition, there are several other benefits from using a definition based on accounting principles. There will be audited financial statement disclosure of an issuer's significant consolidation accounting policies in the footnotes to its audited financial statements contained in its Exchange Act annual reports, and an issuer's determination of control under the final rules will be subject to the audit process as well as subject to the internal accounting controls that issuers are required to have in place with respect to audited financial statements filed with the Commission.[699] All of these benefits may lead to more accurate, reliable, and consistent reporting of subsidiary payments, thereby enhancing the quality of the reported data.

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[695] These are issuers that have a business address, are incorporated, or are listed on exchanges in the EEA or Canada and that have to provide substantially similar disclosure to the European Union or Canadian authorities.

[696] *See* Section II.D of the Proposing Release.

[697] *See* letters from API 1; BP; Chevron; Encana; ExxonMobil 1; Petrobras; and RDS.

[698] *Id.*

[699] *See* Section II.D above.

4. Definition of "Commercial Development of Oil, Natural Gas, or Minerals"

As in the Proposing Release, the final rules define "commercial development of oil, natural gas, or minerals" to include exploration, extraction, processing, and export, or the acquisition of a license for any such activity. As described above, the rules that we are adopting generally track the language in the statute. We are sensitive to the fact that a broader definition of "commercial development of oil, natural gas, or minerals" could increase issuers' costs. We are also sensitive to the fact that expanding the definition in a way that is broader than other reporting regimes could potentially lead to a competitive disadvantage for those issuers covered only by our rules. Further, we recognize that limiting the definition to these specified activities could adversely affect those using the payment information if disclosure about payments made for activities not included in the list of specified activities, such as refining, smelting, marketing, or stand-alone transportation services (*i.e.,* transportation that is not otherwise related to export), would be useful to users of the information.

As noted above, the final rules include an anti-evasion provision that requires disclosure with respect to an activity or payment that, although not in form or characterization one of the categories specified under the final rules, is part of a plan or scheme to evade the disclosure required under Section 13(q).[700] We recognize that adding this requirement may increase the compliance costs for some issuers; however, we believe this provision is appropriate in order to minimize evasion and improve the effectiveness of the disclosure.

5. Types of Payments

As in the Proposing Release, the final rules add two categories of payments to the list of payment types identified in the statute that must be disclosed: Dividends and payments for infrastructure improvements. We include these payment types in the final rules because, based on the comments we have received, we believe they are part of the commonly recognized revenue stream. For example, payments for infrastructure improvements have been required under the EITI since 2011. Additionally, we note that the EU Directives and ESTMA also require these payment types to be disclosed. Thus, including dividends and payments for infrastructure improvements (*e.g.,* building a road) in the list of payment types required to be disclosed under the final rules will promote consistency with the EU Directives and ESTMA and should improve the effectiveness of the disclosure, thereby furthering international transparency promotion efforts.

In a change from the Proposing Release, we are adding CSR payments that are required by law or contract to the list of covered payment types. Some commenters argued that these payments are of material benefit in resource-dependent countries to both governments and local communities.[701] One commenter suggested that some resource extraction issuers already disclose such payments voluntarily and presented survey data indicating that such payments could be quite large.[702] Thus, the addition of CSR payments to the list of types of payments that must be disclosed should improve the quality of the disclosure required by the statute. Additionally, to the extent that it is difficult for certain resource extracting issuers to distinguish between CSR payments and infrastructure payments, requiring both types of payments when required by contract with the host government may lead to lower compliance costs for those issuers.[703]

As discussed earlier, under the final rules resource extraction issuers would incur costs to provide the payment disclosure for the required payment types. For example, there will be costs to modify the issuers' core enterprise resource planning systems and financial reporting systems so that they can capture and report payment data at the project level, for each type of payment, government payee, and currency of payment.[704] Since some of the payments are required to be disclosed only if they are required by law or contract (*e.g.,* CSR payments), resource extraction issuers would presumably track such payments and hence the costs of disclosing these payments may not be large. Nevertheless, the addition of dividends, payments for infrastructure improvements, and CSR payments to the list of payment types for which disclosure is required may marginally increase some issuers' costs of complying with the final rules. For example, issuers may need to add these types of payments to their tracking and reporting systems. We understand that these types of payments are more typical for mineral extraction issuers than for oil issuers,[705] and therefore only a subset of the issuers subject to the final rules might be affected.

Under the final rules, issuers may disclose payments that are made for obligations levied at the entity level, such as corporate income taxes, at the entity level rather than the project level. This accommodation also should help reduce compliance costs for issuers without significantly interfering with the goal of achieving increased payment transparency.

Under the final rules, issuers must disclose payments made in-kind. The EU Directives and ESTMA also require disclosure of in-kind payments, as does the EITI. Consequently, this requirement should help further the goal of supporting international transparency promotion efforts and enhance the effectiveness of the payment disclosure. At the same time, this requirement could impose costs if issuers have not previously had to value their in-kind payments. To minimize the potential additional costs, the final rules provide issuers with the flexibility of reporting in-kind payments at cost, or if cost is not determinable, at fair market value. We believe this approach should lower the overall compliance costs associated with our decision to include the disclosure of in-kind payments.

6. Definition of "Not De Minimis"

Section 13(q) requires the disclosure of payments that are "not de minimis," leaving that term undefined. Consistent with the proposed rules, the final rules define "not de minimis" to mean any payment, whether made as a single payment or a series of related payments, that equals or exceeds $100,000, or its equivalent in the issuer's reporting currency.

We considered adopting a definition of "not de minimis" that was based on a qualitative principle or a relative quantitative measure rather than an absolute quantitative standard. We chose the absolute quantitative approach for several reasons. An absolute quantitative approach should promote consistency of disclosure and, in addition, would be easier for issuers to apply than a definition based on either a qualitative principle or relative quantitative measure. Moreover, using an absolute dollar amount threshold for disclosure purposes should reduce compliance costs by reducing the work necessary to determine what payments must be disclosed.

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[700] *See* proposed Rule 13q–1(b).

[701] *See* letters from ACEP; Broadman & Searby; ExxonMobil 1; Falik; Global Witness 1; Oxfam 1; PWYP–US 1; and USAID.

[702] *See* letter from PWYP–US 1.

[703] *See* letter from ExxonMobil 1.

[704] *See* note 588 and accompanying text.

[705] *See, e.g.,* letters from PWYP–US 1 and Global Witness 1. *See also* Chapter 19 "Advancing the EITI in the Mining Sector: Implementation Issues" by Sefton Darby and Kristian Lempa, in *Advancing the EITI in the Mining Sector: A Consultation with Stakeholders* (EITI 2009).

In choosing the $100,000 "de minimis" threshold, we selected an amount that we believe strikes an appropriate balance in light of varied commenters' concerns and the purpose of the statute. Although commenters on the 2010 Proposing Release suggested various thresholds, no commenter provided data to assist us in determining an appropriate threshold amount.[706] In addition, one commenter on the Proposing Release criticized the proposed $100,000 threshold as too low, although the commenter did not suggest an alternative amount or provide data to support why the threshold was too low.[707] Our proposed threshold is very similar to the payment thresholds of other resource extraction disclosure regimes.[708] For issuers (or their subsidiaries) that are already providing payment information under those resource extraction disclosure regimes, our definition of "not de minimis" will likely decrease compliance costs (compared to other threshold choices) associated with determining which payments should be reported because these issuers will already have systems tailored to this threshold. We considered other absolute amounts but chose $100,000 as the quantitative threshold in the definition of "not de minimis." We decided not to adopt a lower threshold because we are concerned that such an amount could result in undue compliance burdens and raise competitive concerns for many issuers. We also considered defining "not de minimis" either in terms of a materiality standard or by using a larger number, such as $1,000,000. Both of these alternatives might have resulted in lower compliance costs and might have lessened competitive concerns. In determining not to adopt these thresholds, however, we were mindful that they could leave important payment streams undisclosed, reducing the potential benefits to be derived from the final rules. In short, we believe the $100,000 threshold strikes an appropriate balance between concerns about the potential compliance burdens of a lower threshold and the need to fulfill the statutory directive for resource extraction issuers to disclose payments that are "not de minimis."

7. Definition of "Project"

Section 13(q) requires a resource extraction issuer to disclose information about the type and total amount of payments made to a foreign government or the Federal Government for each project relating to the commercial development of oil, natural gas, or minerals, but it does not define the term "project." The final rules define "project" as operational activities governed by a single contract license, lease, concession, or similar legal agreement, which forms the basis for payment liabilities with a government. This definition is based on the definition in the EU Directives and the ESTMA Specifications, but allows for greater flexibility when operational activities governed by multiple legal agreements may be deemed a project.

The definition of "project" that we are adopting should have the benefit of providing a granular transparency that citizens, civil society groups, and others can use to assess revenue flows from projects in their local communities. As we discuss above in Section II.E, this should have a number of potential benefits for information users seeking to prevent corruption and promote accountability. The definition of project may also reduce costs for issuers that are subject to both the final rules and either the EU Directives or ESTMA by not requiring different disaggregation of project-related costs due to different definitions of the term. It also likely will reduce the competitive disadvantage for issuers that could be required to make more granular disclosure of information than their competitors under a narrower definition. The definition also will provide more flexibility in, and reduce the burdens associated with, disaggregating payments made for activities that relate to multiple agreements that are both operationally and geographically interconnected.

The definition may, however, increase the compliance costs for issuers that will be required to implement systems to track payments at a different level of granularity than what they currently track. In a similar vein, it may increase the risk of sensitive contract information being released, thus increasing the likelihood of competitive harm for some affected issuers. At the same time, this risk could be mitigated by the ability of issuers to treat operationally and geographically interconnected agreements as a single "project" notwithstanding that they do not have substantially similar terms.

Several commenters on the Proposing Release suggested that the contract-based definition of "project" would result in the loss of trade secrets and intellectual property more generally.[709] One commenter stated that trade secrets and intellectual property were especially valuable in the resource extraction industry because of its large sunk costs investments and uncertain, long-term payoffs. According to this commenter, the project-level disclosures required by the rule would amount to loss of trade secrets.[710] The commenter did not, however, explain how the project-level disclosure of certain payments to foreign governments would result in the revelation of trade secrets and intellectual property.

Commenters on the Proposing Release also asserted that the definition of "project" would reveal sensitive and proprietary commercial information to competitors, thus resulting in competitive harm for resource extraction issuers.[711] In considering the potential competitive consequences that may result from a contract-based definition of project, we think it is useful to break the analysis into three phases—the exploratory phase, the actual discovery, the development and early production period, and the mature stage of production.[712]

According to industry commenters, the contract-based definition of "project" would allow competitors to derive important information about the new areas under exploration for potential resource development, the value the company places on such resources, and the costs associated with acquiring the right to develop these new resources. This would in turn enable competitors to evaluate the new resources more precisely, and as a result, structure their bids for additional opportunities in the areas with new resources more effectively. We are mindful of these concerns and believe that the targeted exemption for payments related to exploratory activities included in the final rules, which permits registrants to delay the disclosure of these payments for an additional year, should help to mitigate these potential competitive harms. In this regard, we view the disclosure of payment information from the exploratory period as perhaps the most likely to reveal competitively sensitive information regarding a company's activities and expectations about the location of resources. Further, because many larger scale resource extraction issuers are engaged in a continuous and competitive quest to locate new finds, we think a targeted exemption is appropriate to preserve their respective competitive advantages.

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[706] *See* 2012 Adopting Release, n.235 and n.243 and accompanying text.

[707] *See* letter from Nouveau.

[708] *See* discussion in Section II.C.2 of the Proposing Release.

[709] *See* letters from API 1 and ExxonMobil 1.

[710] *See* letter from API 1.

[711] *See* letters from API 1 and ExxonMobil 1.

[712] *See generally* OPEN OIL, OIL CONTRACTS: HOW TO READ AND UNDERSTAND THEM, at 15, *available at http://openoil.net/?wpdmact=process&did=NS5ob3RsaW5r*) (describing the "key stages of a [petroleum] project's life" as exploration, development, production, and decommission).

We do not think the same potential for competitive harm exists after a resource find occurs. To the extent that exploratory activities lead to a new discovery, we note that industry commenters have not explained why a contract-based definition of "project" will lead to the public disclosure of more information about new areas of development and their value than would otherwise be publicly disclosed by analysts, industry consultants, media, and the issuers themselves. In this regard, we note that issuers have an incentive to disclose new developments and their value because this can often have a positive effect on their stock price. Additionally, the issuer's presence in a new area, irrespective of any other disclosure, will often provide information to its competitors that the area may have favorable prospects. Thus, regardless of any disclosures made pursuant to these rules, it is likely that an issuer's new resource discovery would eventually be disclosed by any of several methods, which should attract potential competitors and over time erode the first mover's advantage.

To the extent that the contract-based definition of "project" provides detailed information on the costs of newer projects, it could be advantageous to potential competitors at the expense of the affected issuer. We note, however, that the payments required by the final rules will be only part of the costs of a new project. Unless competitors are able to observe the total costs of a new project, which we are skeptical they could do based just on the required disclosures, they may be unlikely to gain important competitive advantages. Additionally, a commenter's contention that requiring payment disclosure from an issuer in one country will help another country demand more from that same issuer and thus affect the issuer's competitive position does not take into account the fact that differences in geology, risk factors, and various other project characteristics will likely complicate such a strategy.[713]

With respect to those projects that are older or more established, we think it is particularly unlikely that our contract-based definition of "project" will result in the public disclosure of competitively sensitive information. According to the API, the general terms of older projects are typically already available irrespective of whether the contracts have technically been made public.[714] Thus, for resource extraction issuers that have a larger fraction of older or more well-established projects in their portfolio, the competitive harm described by the commenters is likely to be insignificant. Additionally, given that resource extraction projects are generally long-term projects, it is likely that at any point in time older projects will be prevalent in an issuer's portfolio, which again suggests that potential competitive harm from the payment disclosures required by the final rules may not be significant.

Commenters also stated that the contract-based definition of "project" would allow competitors to reverse-engineer proprietary commercial information: For example, to determine the commercial and fiscal terms of the agreements, get a better understanding of an issuer's strategic approach to bidding and contracting, and identify rate of return criteria.[715] Since Section 13(q), like the EU Directives and ESTMA, requires all reporting issuers to disclose such payment information, the playing field among U.S. issuers and resource extraction companies subject to the European and Canadian disclosure regimes should be level since any reporting company could benefit from disclosures of all its reporting competitors.

We note that several commenters on the Proposing Release disputed the assertion that the contract-based definition of "project" would create any competitive disadvantages to affected issuers.[716] One commenter argued that a significant number (84) of the world's largest 100 oil and gas companies and a large number (58) of the world's largest mining companies would be required to disclose their payments under U.S., EU, Canadian, and Norwegian rules, or are doing so voluntarily already, thus diminishing the potential anti-competitive effects of the contract-based definition of "project."[717] We note, however, that the pool of largest oil companies that the commenter was referring to was determined based on market capitalization, which is unavailable for national oil companies and private oil and gas companies. If national and other private oil and gas companies were included in this pool, then the percentage of the largest companies required to disclose their payments under U.S., EU, Canadian, and Norwegian rules could be much smaller.

Relatedly, we acknowledge the potential that our definition of "project" could provide competitive advantages to state-owned oil companies, which are not covered by the final rules. We note that such companies could enjoy an advantage to the extent that they do business in countries other than their own. In this regard, however, it is important to clarify that state-owned oil and gas companies across the globe "differ on a number of very important variables, including the level of competition in the market in which they operate" and "their degree of commercial orientation and internationalization."[718] Moreover, the extent to which state-owned companies compete in the market place against issuers covered by our rules varies. We understand that many state-owned companies operate primarily as gatekeepers for their home countries resource reserves, contracting with non-state-owned companies, such as the large publicly traded U.S. oil and gas companies, to extract the country's natural resources.[719] Other state-owned companies are primarily engaged in directly undertaking the extractive activities themselves for their home country.[720] To the extent a state-owned oil or gas company is operating exclusively or predominantly in either of these two capacities, we anticipate that the issuers covered by our rules would not experience a substantial competitive disadvantage (from these state-owned companies) as a result of project-level payment disclosure. Nevertheless, we acknowledge that some state-owned companies are responsible for competing in the global marketplace to extract oil and gas abroad for import back to their home country (an activity their home country may have them undertake either to ensure a secure supply of natural resources or to balance the power of exporting countries and large non-state-owned oil companies).[721] To the extent any state-owned company acts in this way, it could compete with issuers covered by our rule and might potentially obtain some competitive advantage from the disclosure of sensitive commercial information.[722] That said, we note that any potential competitive harm to U.S. issuers from the final rules could be limited by the fact that, as one commenter observed, national oil companies may already have access to similar commercial information from the numerous business intelligence services that provide real time, contract-level and lease-level information.[723]

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[713] *See* letter from API 1. We also note that the contracting environment varies from country to country and therefore variables beyond the specific contractual provisions relating to revenue for the government may govern an issuer's strategic ability to obtain a license or concession. *See generally,* Ken Silverstein, The Secret World of Oil 14–54, 145–166 (2014) (describing the role that intermediaries and personal contacts can play in obtaining resource extraction contracts in many foreign countries, particularly those countries that lack fully democratic regimes).

[714] *See id.*

[715] *See* letters from API 1 and ExxonMobil 1.

[716] *See* letters from PWYP–US 1 and Oxfam 1.

[717] *See* letter from PWYP–US 1.

[718] *See* World Bank, Working Paper No. 218: National Oil Companies and Value Creation (2011), *available at http://siteresources.worldbank.org/INTOGMC/Resources/9780821388310.pdf,* at xii.

[719] *Id.* at xi.

[720] *Id.*

[721] *Id.* at 23.

One commenter also suggested that foreign issuers may decide to delist from U.S. exchanges because of the competitive advantage they would gain over reporting issuers.[724] We are skeptical as to whether the gains from the potential cost savings and competitive advantages that could result from delisting from U.S. exchanges will be large enough to offset the likely large costs associated with it: Higher cost of capital, limited access to financing, and lower liquidity. Given that most of the major capital markets (*e.g.*, United States, Europe, and Canada) require substantially similar disclosures, it is not obvious to what comparable listing venues issuers could migrate. Another option for issuers will be to delist and become private companies, but this would only magnify the costs of delisting described above and, thus, we think is an unlikely outcome.[725]

One commenter argued that the direct compliance costs associated with the definition of "project" that we are adopting are not justified because we have no data to show any benefits of requiring the disclosure at such a granular level.[726] We note that most of the compliance costs would remain even if we adopted the commenter's preferred approach of identifying payments by subnational political jurisdiction. Even were we to adopt a less granular disclosure requirement (such as, for example, the API Proposal) issuers would still be required to track each payment that they make to foreign governments and the Federal Government in furtherance of resource extraction activities. Issuers would thus still need to modify their systems in substantially similar ways to collect data on each payment, and this would include tagging a significant amount of information about each payment. The principal difference is that issuers would be able to aggregate that data in various ways before submitting it to the Commission at the end of their fiscal year, but the underlying collection systems and tagging would still need to occur for each payment to ensure accurate reporting. Thus, complying with this approach would entail many of the same costs as the definition of "project" we are adopting: Issuers would still need to track every resource extraction payment to foreign governments and the Federal Government, including the type of payment it is and which business unit paid it. Under the broader project definition advocated by the commenter, issuers will themselves have to aggregate the various payment flows in their Section 13(q) disclosures, while under the definition we are adopting they could not do so and would also have to include an additional data tag for each payment specifying the project in connection with which it was made.

Although we lack sufficient data to quantify the potential economic losses that could result from our choice of a contract-based definition of "project," based on the qualitative analysis above, we find that the Section 13(q) disclosure requirements and the definition of "project" that we are adopting are not likely to cause significant competitive harms or result in significant losses.

As an alternative, we could have not defined the term "project." Taking this approach could have provided issuers more flexibility in applying the term to different business contexts depending on factors such as the particular industry or business in which the issuer operates or the issuer's size. Under such an approach, however, resource extraction issuers could have incurred costs in determining their "projects." Moreover, not defining "project" could result in higher costs for some resource extraction issuers than others if an issuer's determination of what constitutes a "project" would result in more granular information being disclosed than another issuer's determination of what constitutes a "project." In addition, not defining "project" may not be as effective in achieving the anticorruption objectives contemplated by the statute because resource extraction issuers' determinations of what constitutes a "project" may differ, which could reduce the comparability of disclosure across issuers.

Finally, we could have adopted the API Proposal, which would allow issuers to combine as one "project" all of the similar extraction activities within a major subnational political jurisdiction. We acknowledge that this aggregated disclosure could potentially impose fewer competitive burdens on resource extraction issuers—particularly those issuers with many similar resource extraction activities occurring within a subnational jurisdiction—as the API suggested definition would not require issuers to expend the time and resources necessary to achieve the type of granular reporting that our proposed rules would require. As discussed above in Section II.E, however, we believe that such a high-level definition, as opposed to the definition we are adopting, would not appropriately serve the anticorruption objectives that Congress intended when it enacted Section 13(q).

8. Annual Report Requirement

Section 13(q) provides that the resource extraction payment disclosure must be "include[d] in an annual report." The final rules require an issuer to file the payment disclosure in an annual report on new Form SD. Form SD will be due no later than 150 days after the end of the issuer's most recent fiscal year. This should lessen the burden of compliance with Section 13(q) and the related rules because issuers generally will not have to incur the burden and cost of providing the payment disclosure at the same time that they must fulfill their disclosure obligations with respect to Exchange

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[722] We note that some import-based state-owned companies that potentially compete globally with U.S. issuers for extraction resources may be subject to our rules (or the EU Directives or ESTMA) to some extent and, thus, will be required to disclose information that could potentially be used by competitors. *See, e.g.*, Zhang Tao & Wang Xiaocong, *China Big Oil Firms on Edge Over U.S. Disclosure*, Market Watch (April 22, 2012), *available at http://www.marketwatch.com/story/china-big-oil-firms-on-edge-over-us-disclosure-2012-04-22* (explaining that "China's state-owned, Big Three oil concerns"—China National Petroleum Corp. (CNPC), China Petroleum & Chemical Corp. (Sinopec) SNP, and China National Offshore Oil Corp. (CNOOC)—have subsidiaries that "are listed on the New York Stock Exchange" and thus may be required to release some revenue resource extraction payment information under Section 13(q)). *See also, id.* (explaining that the U.S.-listed CNOOC subsidiary engages in "oversees exploration and development projects in China and the rest of the world" and that "Sinopec's listed company described overseas projects in its 2010 annual report in Canada, Kazakhstan, Brazil and Angola").

[723] *See* letter from Oxfam-ERI.

[724] *See* letter from API 1.

[725] The commenter also argued that the potential delisting may actually decrease transparency, contrary to Section 13(q)'s intent. According to the commenter, fewer issuers will be reporting (due to the potential delistings) and those reporting would lose market share (due to competitive effects) and hence would have fewer payments to report. As discussed above, we do not think potential delistings will be likely. By the same token, our analysis above suggests that the competition effects of the final rules may not be large enough to lead to losses in market share for extraction issuers. Thus, the commenter's argument that transparency will decrease may be based on an overly pessimistic scenario.

[726] *See* letter from API 1.

Act annual reports.[727] An additional benefit is that this requirement will provide information to users in a standardized manner for all issuers rather than in different annual report forms depending on whether a resource extraction issuer is a domestic or foreign filer. Moreover, requiring the disclosure in new Form SD, rather than in issuers' Exchange Act annual reports, should alleviate any concerns and costs associated with the disclosure being subject to the officer certifications required by Exchange Act Rules 13a–14 and 15d–14.

In a change from the proposed rules, the final rules will allow for a longer transition period for newly acquired companies that were not previously subject to reporting under the final rules.[728] Thus, the final rules will allow issuers that have acquired or otherwise obtain control over an issuer whose resource extraction payments are required to be disclosed under the final rules, and that has not previously been obligated to provide such disclosure pursuant to Rule 13q–1 or another "substantially similar" jurisdiction's requirements, to not commence reporting payment information for the acquired company until the second Form SD filing due after the effective date of the acquisition. This should lessen the burden of compliance with Section 13(q) for such issuers. Additionally, the longer transition period should help ensure that the final rules do not inadvertently discourage efficient business combinations.

In another change from the proposed rules, the final rules will require a resource extraction issuer to comply with Rule 13q–1 and Form SD for fiscal years ending no earlier than two years, rather than one year, after the effective date of the adopted rules. This longer phase-in period should provide issuers with sufficient time to establish the necessary systems and procedures to capture and track all the required payment information before the fiscal year covered by their first Form SD filing starts. The extended compliance date will also provide issuers with additional time to address potential legal barriers to making the required disclosure, such as by amending existing contracts to permit disclosure or, when warranted, seeking appropriate exemptive relief from the Commission.

Resource extraction issuers will incur costs associated with preparing and filing each Form SD. We do not believe, however, that the costs associated with filing each Form SD instead of providing the disclosure in an existing form would be significant. We also acknowledge that requiring covered issuers to file, rather than furnish, the payment information in Form SD may create an incremental risk of liability in litigation under Section 18 of the Exchange Act. This incremental risk of legal liability could be a benefit to users of the information to the extent that issuers will be more attentive to the information they file, thereby increasing the quality of the reported information. We note however that Section 18 does not create strict liability for "filed" information.[729]

Finally, the final rules do not require the resource extraction payment information to be audited or provided on an accrual basis. Not requiring the payment information to be audited or provided on an accrual basis may result in lower compliance costs than otherwise would be the case.[730] At the same time, the lack of independent audit may affect the quality of the payment information. As an alternative, we could have chosen to provide, as one commenter suggested,[731] an aggregated and anonymized compilation of company-provided resource extraction payment information. According to the commenter, such an approach would yield the benefits intended by Congress and at the same time reduce issuer compliance costs. We note that, contrary to the commenter's assertion, such an alternative would likely limit the benefits of disclosure. As discussed more fully in Section II.H, requiring project level disclosure by identified registrants provides important benefits in terms of combating corruption and promoting accountability in resource-rich countries, consistent with the purpose of Section 13(q).

9. Exhibit and Interactive Data Requirement

Section 13(q) requires the payment disclosure to be electronically formatted using an interactive data format. Consistent with the proposed rules, the final rules will require a resource extraction issuer to provide the required payment disclosure in an XBRL exhibit to Form SD that includes all of the electronic tags required by Section 13(q) and the final rules.[732] We believe that requiring the specified information to be presented in XBRL format will benefit issuers and users of the information by promoting consistency and standardization of the information and increasing the usability of the payment disclosure. Providing the required disclosure elements in a human-readable and machine-readable (electronically-tagged) format will allow users to quickly examine, extract, aggregate, compare, and analyze the information in a manner that is most useful to them. This includes searching for specific information within a particular submission as well as performing large-scale statistical analysis using the disclosures of multiple issuers and across date ranges. In a change from the Proposing Release, and as suggested by certain commenters, we are requiring issuers to tag the subnational geographic location using ISO codes. Using ISO codes will standardize references to those subnational geographic locations and will benefit the users of this information by making it easier to sort and compare the data. It may also increase compliance costs for issuers that do not currently use such codes in their reporting systems.

Our choice of XBRL as the required interactive data format may increase compliance costs for some issuers. The electronic formatting costs will vary depending upon a variety of factors, including the amount of payment data disclosed and an issuer's prior experience with XBRL. While most issuers are already familiar with XBRL because they use it to tag financial information in their annual and quarterly reports filed with the Commission, issuers that are not already filing reports using XBRL (*i.e.*, foreign private issuers that report using IFRS)[733] would incur some start-up costs associated with the format. We do not believe, however, that the ongoing costs associated with this formatting requirement will be significantly greater than filing the data in XML.[734]

Consistent with the statute, the final rules require a resource extraction issuer to include an electronic tag that identifies the currency used to make the payments. Under the final rules, if multiple currencies are used to make payments for a specific project or to a government, a resource extraction issuer may choose to provide the amount of payments made for each payment type and the total amount per project or per government in either U.S. dollars or the issuer's reporting currency.[735] We recognize that a resource extraction issuer could incur costs associated with converting payments made in multiple currencies to U.S. dollars or its reporting currency. Nevertheless, given the statute's tagging requirements and the requirement to disclose total amounts, we believe reporting in one currency is necessary.[736] The final rules provide flexibility to issuers in how to perform the currency conversion, which may result in lower compliance costs because it enables issuers to choose the option that works best for them. To the extent issuers choose different options to perform the conversion, it may result in less comparability of the payment information and, in turn, could result in costs to users of the information.

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[727] For example, a resource extraction issuer may potentially be able to save resources to the extent that the timing of its obligations with respect to its Exchange Act annual report and its obligations to provide payment disclosure allow for it to allocate its resources, in particular personnel, more efficiently.

[728] *See* Section II.G.3 above.

[729] *See* Exchange Act Section 18 [15 U.S.C. 78r]. A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security in reliance on the misstatement and incurring damages caused by that reliance.

[730] *See* note 297 of the Proposing Release and accompanying text.

[731] *See* letter from API 1.

[732] Users of this information should be able to render the information by using software available on our Web site at no cost.

[733] We estimate that 16 of the 425 affected issuers fall into this category.

[734] *See* Section II.G.5 of the Proposing Release.

IV. Paperwork Reduction Act

A. Background

Certain provisions of the final rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[737] The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted the proposed requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA and its implementing regulations.[738] Several commenters provided qualitative comments on the possible costs of the proposed rule and form amendment, but only one commenter addressed our PRA analysis.[739] This comment is discussed below. Where appropriate, we have revised our burden estimates to reflect differences between the proposed rules and the rules we are adopting today.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The title for the collection of information is:

- "Form SD" (OMB Control No. 3235–0697).

Form SD is currently used to file Conflict Minerals Reports pursuant to Rule 13p–1 of the Exchange Act. We are adopting amendments to Form SD to accommodate disclosures required by Rule 13q–1, which requires resource extraction issuers to disclose information about payments made by the issuer, a subsidiary of the issuer, or an entity under the control of the issuer to foreign governments or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Form SD is filed on EDGAR with the Commission.

The final rules and amendment to the form implement Section 13(q) of the Exchange Act, which was added by Section 1504 of the Act. Section 13(q) requires the Commission to "issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals, and (ii) the type and total amount of such payments made to each government." [740] Section 13(q) also mandates the submission of the payment information in an interactive data format, and provides the Commission with the discretion to determine the applicable interactive data standard.[741] The final rules require the mandated payment information to be provided in an XBRL exhibit to Form SD. The disclosure requirements apply equally to U.S. issuers and foreign issuers meeting the definition of "resource extraction issuer."

Compliance with the rules by affected issuers is mandatory. Responses to the information collections are generally not kept confidential and there would be no mandatory retention period for the collection of information.

B. Estimate of Issuers

The number, type, and size of the issuers that are required to file the payment information required in Form SD, as amended, is uncertain, but, as discussed in the economic analysis above, we estimate that the number of potentially affected issuers is 755.[742] Of these issuers, we have identified 192 that may be subject to similar resource extraction payment disclosure rules in other jurisdictions by the time the final rules are adopted and 138 shell companies and other smaller issuers that are unlikely to make any payments that would be subject to the disclosure requirements.[743] For the issuers subject to similar disclosure rules in other jurisdictions, the additional costs to comply with our rules will be much lower than costs for other issuers.[744] For the smaller issuers that are unlikely to be subject to the rules, we believe there would be no additional costs associated with our rules. Accordingly, we estimate that 425 issuers will bear the full costs of compliance with the final rules, with 192 bearing significantly lower costs.

C. Estimate of Issuer Burdens

After considering the comments and international developments,[745] we continue to derive our burden estimates by estimating the average number of hours it would take an issuer to prepare and file the required disclosure.[746] In deriving our estimates, we recognize that the burdens would likely vary among individual issuers based on a number of factors, including the size and complexity of their operations and whether they are subject to similar disclosure requirements in other jurisdictions.

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[735] *See* Instruction 2 to Item 2.01 of Form SD.

[736] *See* discussion in Section II.G.5 of the Proposing Release.

[737] 44 U.S.C. 3501 *et seq.*

[738] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[739] *See* letter from Claigan.

[740] 15 U.S.C. 78m(q)(2)(A).

[741] 15 U.S.C. 78m(q)(2)(C) and (D).

[742] *See* Section III.A above. As discussed in Section III.A above, we derived the number of potentially affected issuers using data from 2015 to estimate the number of issuers that might make payments covered by the final rules. This number does not reflect the number of issuers that actually made resource extraction payments to governments.

[743] *See* Section III.B.2 above (describing in more detail how we identified issuers that may be subject to foreign reporting requirements and how we used revenues and net cash flows from investing activities and shell company status to identify issuers that would be unlikely to make payments exceeding the proposed de minimis threshold).

[744] Under the final rules, a determination by the Commission that another jurisdiction's reporting requirements are substantially similar to ours would lower an issuer's compliance burden. The Commission has made this determination with respect to the EU Directives, ESTMA, and the USEITI. If the issuer is subject to the EU Directives or ESTMA it would already have gathered, or have systems in place to gather, resource extraction payment data by the time it must comply with the final rules. If the issuer is subject to the USEITI it would already have gathered, or have systems in place to gather, resource extraction payment data with respect to payments made to the U.S. Federal Government from federal lands or waters. Although for purposes of our economic analysis the costs to the 192 issuers that may already be subject to similar resource extraction payment disclosure rules would be negligible, we have included them in our estimate of issuers for PRA purposes because under the final rules they would continue to have an obligation to file a report on Form SD in XBRL, although with a significantly lower associated burden. *See* Section II.J above.

[745] Although most of the comments we received with respect to our PRA estimates related to the 2010 Proposing Release, which required the disclosure in Forms 10–K, 20–F, and 40–F, among other differences, we have considered these estimates in arriving at our PRA estimate for Form SD because, although the disclosures would be provided pursuant to a new rule and on Form SD, the disclosure requirements themselves are similar. We also believe that this is the more conservative approach given that changes from the 2010 Proposing Release should generally reduce the burdens that were considered by those commenters.

When determining the estimates described below, we have assumed that 75% of the burden of preparation is carried by the issuer internally and 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[747] One commenter questioned the basis for using $400 per hour. This commenter used $150 per hour in its analysis of the costs associated with the proposed rules. This commenter stated that $150 per hour was a "conservative estimate" based on a rounded multiple of the hourly mean wage for accountants and auditors in the field of Management, Scientific, and Technical Consulting Services ($37.27 × 3 = 111.81, rounded up to $150).[748] We disagree with this estimate, however, because that rate does not factor in the outside professional costs associated with preparing a document subject to potential liability under applicable securities laws. Resource extraction issuers likely will seek the advice of attorneys to mitigate the risks associated with such liability, as well as to help them comply with the rule and form requirements. Thus, consistent with our conservative approach when considering the applicable costs and burdens, we continue to use the $400 per hour estimate.

The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. In connection with the 2010 Proposing Release, we received estimates from some commenters expressed in burden hours and estimates from other commenters expressed in dollar costs.[749] We expect that the rules' effect would be greatest during the first year of their effectiveness and diminish in subsequent years. To account for this expected diminishing burden, we believe that a three-year average of the expected implementation burden during the first year and the expected ongoing compliance burden during the next two years is a reasonable estimate.

In connection with the 2010 Proposing Release, some commenters estimated implementation costs of tens of millions of dollars for large filers and millions of dollars for smaller filers.[750] These commenters did not describe how they defined "small" and "large" filers. One commenter provided an estimate of $50 million in implementation costs if the definition of "project" is narrow and the level of disaggregation is high across other reporting parameters, though it did not provide alternate estimates for different definitions of "project" or different levels of disaggregation.[751] We note that the commenter that provided this estimate was among the largest 20 oil and gas companies in the world,[752] and we believe that the estimate it provided may be representative of the costs to companies of similar large size rather than smaller companies.

Generally, we note that some of the estimates we received may reflect the burden to a particular commenter, and may not represent the burden for other resource extraction issuers.[753] Also, while we received estimates for smaller companies and an estimate for one of the largest companies, we did not receive data on companies of varying sizes in between the two extremes.[754] Finally, commenters' estimates on the burdens associated with initial implementation and ongoing compliance varied widely.

As discussed above, we estimate that 425 issuers would bear the full costs of compliance and 192 issuers are subject to similar resource extraction payment disclosure rules, such that the additional costs to comply with our rules will be much lower than costs for other issuers. We also estimate that 138 smaller issuers, including shell companies, will bear no compliance costs because it is likely that any payments they make for the purpose of the commercial development of oil, natural gas, or minerals will be considered de minimis under the proposed rules. We have used the cost estimates provided by commenters to estimate the compliance burden for affected issuers for PRA purposes. To distinguish between the burden faced by the two groups of affected issuers described above, we have assumed that the issuers who may already be complying with a similar foreign disclosure regime would have compliance costs of approximately five percent of the issuers that bear the full costs of compliance.[755] For issuers bearing the full costs, we note that Barrick Gold estimated an initial compliance burden of 1,000 hours (500 hours for initial changes to internal books and records and 500 hours for initial compliance).[756] Although we believe that initial implementation costs would increase with the size of the issuer, as discussed in our economic analysis above,[757] commenters did not provide estimates on the fraction of compliance costs that would be fixed versus variable. Also, since commenters' cost estimates were based on policy choices made in the 2010 Proposing Release, they might not reflect these commenters' views on the final rules. Unfortunately, we are unable to reliably quantify the reduction in these cost estimates based on the policy changes reflected in the final rules. Thus, despite Barrick Gold being a large accelerated filer and commenting on proposed rules that we believe would have been more onerous than the final rules, we use its estimate of 1,000 hours as a conservative estimate.

We believe that the burden associated with this collection of information will be greatest during the implementation period to account for initial set up costs, but that ongoing compliance costs would be less because companies would have already made any necessary modifications to their systems to capture and report the information required by the final rules. In connection with the 2010 Proposing Release, two commenters provided estimates of ongoing compliance costs: Rio Tinto provided an estimate of 5,000–10,000 burden hours for ongoing compliance,[758] while Barrick Gold provided an estimate of 500 burden hours for ongoing compliance. Based on total assets, Rio Tinto is one of the largest resource extraction issuers. We believe that, because of Rio Tinto's size, the estimate it provided may be representative of the burden for resource extraction issuers of a similar size, but may not be a representative estimate for smaller resource extraction issuers. Although in terms of total assets Barrick Gold is among the largest resource extraction issuers that are Exchange Act reporting companies, it is closer in size to the average issuer than is Rio Tinto. As such, we believe that Barrick Gold's estimate is a better estimate of the ongoing compliance burden hours. We acknowledge, however, that using Barrick Gold's estimate is a conservative approach. For example, the average total assets of issuers that we believe would be bearing the full costs of the rules is 19% of Barrick Gold's total assets for 2015 ($6.4 billion/$33.9 billion).[759]

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[746] As discussed above, Rule 13q–1 requires resource extraction issuers to file the payment information required in Form SD. The collection of information requirements are reflected in the burden hours estimated for Form SD. Therefore, Rule 13q–1 does not impose any separate burden.

[747] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting. We note that no commenters provided us with an alternative rate estimate for these purposes in connection with the 2010 Proposing Release.

[748] *See* letter from Claigan.

[749] *See* 2012 Adopting Release at Section IV.B.

[750] *See* letters from API 1 (pre-proposal) and ExxonMobil 1 (pre-proposal).

[751] *See* letter from ExxonMobil 1 (pre-proposal).

[752] *See* letter from API (Oct. 12, 2010) (ranking the 75 largest oil and gas companies by reserves and production).

[753] For example, one commenter's letter indicated that it had approximately 120 operating entities. *See* letter from Rio Tinto (pre-proposal).

[754] *See* letter from API 1 (pre-proposal) (estimating implementation costs in the tens of millions of dollars for large filers and millions of dollars for many smaller filers). This commenter did not explain how it defined small and large filers.

[755] We are using the proposed five percent estimate even though it was developed prior to the Commission granting alternative reporting status to the EU Directives and ESTMA. We believe this approach conservatively estimates the burden alternative report filers will face (*e.g.*, when converting the alternative report to XBRL format or possibly translating the report to English).

[756] We use Barrick Gold's estimate because it is the only commenter that provided a number of hours and dollar value estimates for initial and ongoing compliance costs. Although in the economic analysis above we used ExxonMobil's dollar value estimate to calculate an upper bound of compliance costs, we are unable to calculate the number of burden hours for purposes of the PRA analysis using ExxonMobil's dollar value inputs.

[757] *See* Section III.B.2 above.

Thus, using the three-year average of the expected burden during the first year and the expected ongoing burden during the next two years, we estimate that the incremental collection of information burden associated with the rules would be 667 burden hours per fully affected respondent (1000 + 500 + 500)/3 years). We estimate that the rules would result in an internal burden of approximately 212,606.25 hours (425 responses × 667 hours/response × .75) for issuers bearing the full costs and 4,802.4 hours (192 responses × 33.35 hours/response × .75) for issuers that are subject to similar resource extraction payment disclosure rules in other jurisdictions, amounting to a total incremental company burden of 217,408.65 hours (212,606.25 + 4,802.4).

Outside professional costs would be $28,347,500 (425 responses × 667 hours/response × .25 × $400) for issuers bearing the full costs and $640,320 (192 responses × 33.35 hours/response × .25 × $400) for issuers that are subject to similar resource extraction payment disclosure rules in other jurisdictions, amounting to total outside professional costs of $28,987,820 ($28,347,500 + $640,320). Barrick Gold also indicated that its initial compliance costs would include $100,000 for IT consulting, training, and travel costs. Again, we believe this to be a conservative estimate given the size of Barrick Gold compared to our estimate of the average resource extraction issuer's size. We do not, however, believe that these initial IT costs would apply to the issuers that are already subject to similar resource extraction payment disclosure rules, since those issuers should already have such IT systems in place to comply with a foreign regime. Thus, we estimate total IT compliance costs to be $42,500,000 (425 issuers × $100,000). We have added the estimated IT compliance costs to the cost estimates for other professional costs discussed above to derive total professional costs for PRA purposes of $71,487,820 ($28,987,820 + $42,500,000) for all issuers.[760] The total burden hours and total professional costs discussed above are in addition to the existing estimated hour and cost burdens applicable to Form SD as a result of compliance with Exchange Act Rule 13p–1.

V. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.[761] It relates to rule and form amendments that we are adopting today to implement Section 13(q) of the Exchange Act, which concerns certain disclosure obligations of resource extraction issuers. As defined by Section 13(q), a resource extraction issuer is an issuer that is required to file an annual report with the Commission and engages in the commercial development of oil, natural gas, or minerals. An Initial Regulatory Flexibility Analysis (IRFA) was prepared in accordance with the Regulatory Flexibility Act and included in the Proposing Release.

A. Need for the Rules

The rule and form amendments are designed to implement the requirements of Section 13(q), which was added by Section 1504 of the Act. Specifically, the rule and form amendments will require a resource extraction issuer to disclose in an annual report certain information relating to any payment made by the issuer, a subsidiary of the issuer, or an entity under the issuer's control to a foreign government or the U.S. Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. An issuer will be required to include that information in an exhibit to Form SD. The exhibit must be formatted in XBRL.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on every aspect of the IRFA, including the number of small entities that would be affected by the proposed rule and form amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed rules. We did not receive any comments specifically addressing the IRFA. We did, however, receive one comment recommending that smaller reporting companies be given more time before being required to comply with the final rules.[762] This commenter believed that, in the aggregate, smaller reporting companies represent a small percentage of the total payments made to governments by resource extraction issuers and therefore a longer transition period should not impair the effectiveness of the final rules. As discussed above, other commenters disagreed with that approach.[763] Although not limited to small entities, the final rules take into account the suggestion for a longer transition period by providing a two-year transition period for all issuers rather than the one-year transition period that was proposed.[764]

C. Small Entities Subject to the Rules

The final rules will affect small entities that are required to file an annual report with the Commission under Section 13(a) or Section 15(d) of the Exchange Act and are engaged in the commercial development of oil, natural gas, or minerals. Exchange Act Rule 0–10(a)[765] defines an issuer (other than an investment company) to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. Based on a review of total assets for Exchange Act registrants filing under certain SICs,[766] we estimate that there are approximately 229 companies that will be considered resource extraction issuers under the final rules and that may be considered small entities.

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[758] *See* letter from Rio Tinto (pre-proposal). This commenter estimated 100–200 hours of work at the head office, an additional 100–200 hours of work providing support to its business units, and a total of 4,800–9,600 hours by its business units. We arrived at the estimated range of 5,000–10,000 hours by adding the estimates provided by this commenter (100 + 100 + 4,800 = 5,000 and 200 + 200 + 9,600 = 10,000).

[759] The average estimated resource extraction issuer's total assets compared to Rio Tinto's total assets ($108.0 billion for 2015) is 6%.

[760] We note that this PRA cost estimate serves a different purpose than the economic analysis and, accordingly, estimates costs differently. *See* Section III above. One of these differences is that the economic analysis estimates average total compliance costs for affected issuers without dividing such costs between internal burden hours and external cost burdens. *See* Section III.B.2.b above.

[761] 5 U.S.C. 603.

[762] *See* letter from Ropes & Gray. In connection with the 2010 Proposing Release we received comments requesting an exemption for a "small entity" or "small business" having $5 million or less in assets on the last day of its more recently completed fiscal year; however, these comments were not raised again by those commenters after the Proposing Release. *See* 2012 Adopting Release, at n.662 and accompanying text.

[763] *See* Section II.I above.

[764] *See* Section II.M.3 above for additional details.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The final rule and form amendments add to the annual disclosure requirements of companies meeting the definition of resource extraction issuer, including small entities, by requiring them to provide the payment disclosure mandated by Section 13(q) in Form SD. That information must include:

- The type and total amount of payments made for each project of the issuer relating to the commercial development of oil, natural gas, or minerals; and
- the type and total amount of those payments made to each government.

A resource extraction issuer must provide the required disclosure in an exhibit to Form SD formatted in XBRL. Consistent with the statute, the final rules require an issuer to submit the payment information using electronic tags that identify, for any not de minimis payment made by a resource extraction issuer to a foreign government or the U.S. Federal Government:

- The type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;
- The type and total amount of such payments for all projects made to each government;
- The total amounts of the payments, by payment type;
- The currency used to make the payments;
- The fiscal year in which the payments were made;
- The business segment of the resource extraction issuer that made the payments;
- The governments (including any foreign government or the Federal Government) that received the payments and the country in which each such government is located;
- The project of the resource extraction issuer to which the payments relate;
- The particular resource that is the subject of commercial development; and
- The subnational geographic location of the project.

The same payment disclosure requirements will apply to U.S. and foreign resource extraction issuers.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with adopting the final rule and form amendments, we considered, as alternatives, establishing different compliance or reporting requirements which take into account the resources available to smaller entities; exempting smaller entities from coverage of the disclosure requirements, or any part thereof; clarifying, consolidating, or simplifying the disclosure for small entities; and using performance standards rather than design standards.

Section 13(q) is designed to enhance the transparency of payments by resource extraction issuers to governments and providing different disclosure requirements for small entities or exempting them from the coverage of the requirements may undermine the intended benefits of the disclosure mandated by Section 13(q). As discussed above, we estimate that a significant number (43%) of affected issuers are smaller reporting companies; therefore, exempting such issuers from the final rules could create a significant gap in the intended transparency. Furthermore, no commenters supported an exemption or different reporting requirements for small entities in response to the Proposing Release. Only one commenter specifically called for an extended transition period for such entities. In response to that comment and other concerns, we have provided a longer transition period prior to the application of the rules to all resource extraction issuers, rather than only small entities.

We have used design rather than performance standards in connection with the final rule and form amendments because the statutory language, which requires electronic tagging of specific items, contemplates specific disclosure requirements and no commenters objected to this approach. We also believe that the rules would be more useful to users of the information if there are specific disclosure requirements that promote transparent and consistent disclosure among all resource extraction issuers. Such requirements should help further the statutory goal of supporting international transparency promotion efforts. For this reason, we have not used consolidated or simplified disclosure requirements for small entities.

VI. Statutory Authority

We are adopting the rule and form amendments contained in this document under the authority set forth in Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249b

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 240.13q–1 is revised to read as follows:

§ 240.13q–1 Disclosure of payments made by resource extraction issuers.

(a) *Resource extraction issuers.* Every issuer that is required to file an annual report with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) and engages in the commercial development of oil, natural gas, or minerals must file a report on Form SD (17 CFR 249b.400) within the period specified in that Form disclosing the information required by the applicable items of Form SD as specified in that Form.

(b) *Anti-evasion.* Disclosure is required under this section in circumstances in which an activity related to the commercial development of oil, natural gas, or minerals, or a payment or series of payments made by a resource extraction issuer to a foreign government or the Federal Government for the purpose of commercial development of oil, natural gas, or minerals is not, in form or characterization, within one of the categories of activities or payments specified in Form SD, but is part of a plan or scheme to evade the disclosure required under this section.

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[765] 17 CFR 240.0–10(a).

[766] *See* Section III.B above for a discussion of how we estimated the number of "resource extraction issuers" under the final rules.

(c) *Alternative reporting.* An application for recognition of a regime as substantially similar for purposes of alternative reporting must be filed in accordance with the procedures set forth in Rule 0–13 (§ 240.0–13), except that, for purposes of this paragraph (c), applications may be submitted by resource extraction issuers, governments, industry groups, or trade associations.

(d) *Exemptive relief.* An application for exemptive relief under this section may be filed in accordance with the procedures set forth in Rule 0–12 (§ 240.0–12).

(e) *Public compilation.* To the extent practicable, the staff will periodically make a compilation of the information required to be filed under this section publicly available online. The staff may determine the form, manner and timing of the compilation, except that no information included therein may be anonymized (whether by redacting the names of the resource extraction issuer or otherwise).

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 249b is amended by revising the entry for § 249b.400 to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

Section 249b.400 is also issued under secs. 1502 and 1504, Pub. L. 111–203, 124 Stat. 2213 and 2220.

■ 4. Amend Form SD (referenced in § 249b.400) by:

■ a. Adding a check box for Rule 13q–1;

■ b. Revising instruction A. under "General Instructions";

■ c. Redesignating instruction B.2. as B.3 and adding new instructions B.2. and B.4. under the "General Instructions"; and

■ d. Redesignating Section 2 as Section 3, adding new Section 2, and revising newly redesignated Section 3 under the "Information to be Included in the Report".

The addition and revision read as follows:

Note: The text of Form SD does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SD

Specialized Disclosure Report

(Exact name of the registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Commission File Number)

(I.R.S. Employer Identification No.)

(Full mailing address of principal executive offices)

(Name and telephone number, including area code, of the person to contact in connection with this report.)

Check the appropriate box to indicate the rule pursuant to which this Form is being filed, and provide the period to which the information in this Form applies:

____Rule 13p–1 under the Securities Exchange Act (17 CFR 240.13p–1) for the reporting period from January 1 to December 31,______.

____Rule 13q–1 under the Securities Exchange Act (17 CFR 240.13q–1) for the fiscal year ended______.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form SD.

This Form shall be used for a report pursuant to Rule 13p–1 (17 CFR 240.13p–1) and Rule 13q–1 (17 CFR 240.13q–1) under the Securities Exchange Act of 1934 (the "Exchange Act").

B. Information to be Reported and Time for Filing of Reports.

1. * * *

2. *Form filed under Rule 13q–1.* File the information required by Section 2 of this form on EDGAR no later than 150 days after the end of the issuer's most recent fiscal year.

3. If the deadline for filing this Form occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the deadline shall be the next business day.

4. The information and documents filed in this report shall not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, unless the registrant specifically incorporates it by reference into such filing.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Section 2—Resource Extraction Issuer Disclosure

Item 2.01 Resource Extraction Issuer Disclosure and Report

(a) *Required Disclosure.* A resource extraction issuer must file an annual report on Form SD with the Commission, and include as an exhibit to this Form SD, information relating to any payment made during the fiscal year covered by the annual report by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer, to a foreign government or the Federal Government, for the purpose of the commercial development of oil, natural gas, or minerals. The resource extraction issuer is not required to have the information audited. The payment information must be provided on a cash basis. The resource extraction issuer must provide a statement in the body of the Form SD that the specified payment disclosure required by this Form is included in such exhibit. The resource extraction issuer must include the following information in the exhibit, which must present the information in the eXtensible Business Reporting Language (XBRL) electronic format:

(1) The type and total amount of such payments, by payment type listed in paragraph (d)(8)(iii) of this Item, made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals;

(2) The type and total amount of such payments, by payment type listed in paragraph (d)(8)(iii) of this Item, for all projects made to each government;

(3) The total amounts of the payments, by payment type listed in paragraph (d)(8)(iii) of this Item;

(4) The currency used to make the payments;

(5) The fiscal year in which the payments were made;

(6) The business segment of the resource extraction issuer that made the payments;

(7) The governments (including any foreign government or the Federal Government) that received the payments and the country in which each such government is located;

(8) The project of the resource extraction issuer to which the payments relate;

(9) The particular resource that is the subject of commercial development; and

(10) The subnational geographic location of the project.

(b) *Delayed Reporting.* (1) A resource extraction issuer may delay disclosing payment information related to exploratory activities until the Form SD filed for the fiscal year immediately following the fiscal year in which the payment was made. For purposes of this paragraph, payment information related to exploratory activities includes all payments made as part of the process of (i) identifying areas that may warrant examination, (ii) examining specific areas that are considered to have prospects of containing oil and gas reserves, or (iii) as part of a mineral exploration program, in each case limited to exploratory activities that were commenced prior to any development or extraction activities on the property, any adjacent property, or any property that is part of the same project.

(2) A resource extraction issuer that has acquired (or otherwise obtains control over) an entity that has not been obligated to provide disclosure pursuant to Rule 13q–1 or another ''substantially similar'' jurisdiction's requirements in such entity's last full fiscal year is not required to commence reporting payment information for such acquired entity until the Form SD filed for the fiscal year immediately following the effective date of the acquisition. A resource extraction issuer must disclose that it is relying on this accommodation in the body of its Form SD filing.

(c) *Alternative Reporting.* (1) A resource extraction issuer that is subject to the resource extraction payment disclosure requirements of an alternative reporting regime that has been deemed by the Commission to be substantially similar to the requirements of Rule 13q–1 (17 CFR 240.13q–1) may satisfy its disclosure obligations under paragraph (a) of this Item 2.01 by including, as an exhibit to this Form SD, a report complying with the reporting requirements of the alternative jurisdiction.

(2) The alternative report must be the same as the one prepared and made publicly available pursuant to the requirements of the approved alternative reporting regime, subject to changes necessary to comply with any conditions to alternative reporting set forth by the Commission.

(3) The resource extraction issuer must: (i) State in the body of the Form SD that it is relying on the alternative reporting provision; (ii) identify the alternative reporting regime for which the report was prepared; (iii) describe how to access the publicly filed report in the alternative jurisdiction; and (iv) specify that the payment disclosure required by this Form is included in an exhibit to this Form SD.

(4) The alternative report must be provided in XBRL format.

(5) A fair and accurate English translation of the entire report must be filed if the report is in a foreign language. Project names may be presented in their original language, in addition to the English translation of the project name, if the resource extraction issuer believes that such an approach would facilitate identification of the project by users of the disclosure.

(6) Unless the Commission provides otherwise in an exemptive order, a resource extraction issuer may follow the submission deadline of an approved alternative jurisdiction if it files a notice on Form SD–N on or before the due date of its Form SD indicating its intent to file the alternative report using the alternative jurisdiction's deadline. If a resource extraction issuer fails to file such notice on a timely basis, or files such a notice but fails to file the alternative report within two business days of the alternative jurisdiction's deadline, it may not rely on this Item 2.01(c) for the following fiscal year.

(7) Resource extraction issuers must also comply with any additional requirements that are provided by the Commission upon granting an alternative reporting accommodation, as well as subsequent changes in such requirements.

(d) *Definitions.* For purposes of this item, the following definitions apply:

(1) *Business segment* means a business segment consistent with the reportable segments used by the resource extraction issuer for purposes of financial reporting.

(2) *Commercial development of oil, natural gas, or minerals* means exploration, extraction, processing, and export of oil, natural gas, or minerals, or the acquisition of a license for any such activity.

(3) *Control* means that the resource extraction issuer consolidates the entity or proportionately consolidates an interest in an entity or operation under the accounting principles applicable to the financial statements included in the resource extraction issuer's periodic reports filed pursuant to the Exchange Act (*i.e.*, under generally accepted accounting principles in the United States (U.S. GAAP) or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS), but not both). A foreign private issuer that prepares financial statements according to a comprehensive set of accounting principles, other than U.S. GAAP or IFRS, and files with the Commission a reconciliation to U.S. GAAP must determine control using U.S. GAAP.

(4) *Export* means the movement of a resource across an international border from the host country to another country by a company with an ownership interest in the resource. Export does not include the movement of a resource across an international border by a company that (i) is not engaged in the exploration, extraction, or processing of oil, natural gas, or minerals and (ii) acquired its ownership interest in the resource directly or indirectly from a foreign government or the Federal Government. Export also does not include cross-border transportation activities by an entity that is functioning solely as a service provider, with no ownership interest in the resource being transported.

(5) *Extraction* means the production of oil and natural gas as well as the extraction of minerals.

(6) *Foreign government* means a foreign government, a department, agency, or instrumentality of a foreign government, or a company at least majority owned by a foreign government. As used in this Item 2.01, foreign government includes a foreign national government as well as a foreign subnational government, such as the government of a state, province, county, district, municipality, or territory under a foreign national government.

(7) *Not de minimis* means any payment, whether made as a single payment or a series of related payments, which equals or exceeds $100,000, or its equivalent in the resource extraction issuer's reporting currency, during the fiscal year covered by this Form SD. In the case of any arrangement providing for periodic payments or installments, a resource extraction issuer must use the aggregate amount of the related periodic payments or installments of the related payments in determining whether the payment threshold has been met for that series of payments, and accordingly, whether disclosure is required.

(8) *Payment* means an amount paid that:

(i) Is made to further the commercial development of oil, natural gas, or minerals;

(ii) Is not de minimis; and

(iii) Is one or more of the following:

(A) Taxes;

(B) Royalties;

(C) Fees;
(D) Production entitlements;
(E) Bonuses;
(F) Dividends;
(G) Payments for infrastructure improvements; and
(H) Community and social responsibility payments that are required by law or contract.

(9) *Project* means operational activities that are governed by a single contract, license, lease, concession, or similar legal agreement, which form the basis for payment liabilities with a government. Agreements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project.

(10) *Resource extraction issuer* means an issuer that:

(i) Is required to file an annual report with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)); and

(ii) Engages in the commercial development of oil, natural gas, or minerals.

(11) *Subsidiary* means an entity controlled directly or indirectly through one or more intermediaries.

Instructions to Item 2.01

Disclosure by Subsidiaries and other Controlled Entities

(1) If a resource extraction issuer is controlled by another resource extraction issuer that has filed a Form SD disclosing the information required by Item 2.01 for the controlled entity, then such controlled entity is not required to file the disclosure required by Item 2.01 separately. In such circumstances, the controlled entity must file a notice on Form SD indicating that the required disclosure was filed on Form SD by the controlling entity, identifying the controlling entity and the date it filed the disclosure. The reporting controlling entity must note that it is filing the required disclosure for a controlled entity and must identify the controlled entity on its Form SD filing.

Currency Disclosure and Conversion

(2) A resource extraction issuer must report the amount of payments made for each payment type, and the total amount of payments made for each project and to each government, during the reporting period in either U.S. dollars or the resource extraction issuer's reporting currency. If a resource extraction issuer has made payments in currencies other than U.S. dollars or its reporting currency, it may choose to calculate the currency conversion between the currency in which the payment was made and U.S. dollars or the resource extraction issuer's reporting currency, as applicable, in one of three ways: (a) By translating the expenses at the exchange rate existing at the time the payment is made; (b) using a weighted average of the exchange rates during the period; or (c) based on the exchange rate as of the resource extraction issuer's fiscal year end. When calculating whether the de minimis threshold has been exceeded, a resource extraction issuer may be required to convert the payment to U.S. dollars, even though it is not required to disclose those payments in U.S. dollars. For example, this may occur when the resource extraction issuer is using a non-U.S. dollar reporting currency. In these instances, the resource extraction issuer may use any of the three methods described above for calculating the currency conversion. In all cases a resource extraction issuer must disclose the method used to calculate the currency conversion and must choose a consistent method for all such currency conversions within a particular Form SD filing.

Geographic Location Tagging

(3) When identifying the country in which a government is located, a resource extraction issuer must use the code provided in ISO 3166 if available. When identifying the "subnational geographic location of the project," as used in Item 2.01(a)(10), a resource extraction issuer must include the subdivision code provided in ISO 3166 if available and must also include sufficiently detailed additional information to permit a reasonable user of the information to identify the project's specific, subnational, geographic location. In identifying the project's specific location, resource extraction issuers may use subnational jurisdiction(s) (*e.g.*, a state, province, county, district, municipality, territory, etc.) and/or a commonly recognized, subnational, geographic or geological description (*e.g.*, oil field, basin, canyon, delta, desert, mountain, etc.). More than one descriptive term may be necessary when there are multiple projects in close proximity to each other or when a project does not reasonably fit within a commonly recognized, subnational geographic location. In considering the appropriate level of detail, resource extraction issuers may need to consider how the relevant contract identifies the location of the project.

Entity Level Disclosure and Tagging

(4) If a government levies a payment obligation, such as a tax or a requirement to pay a dividend, at the entity level rather than on a particular project, a resource extraction issuer may disclose that payment at the entity level. To the extent that payments, such as corporate income taxes and dividends, are made for obligations levied at the entity level, a resource extraction issuer may omit certain tags that may be inapplicable (*e.g.*, project tag, business segment tag) for those payment types as long as it provides all other electronic tags, including the tag identifying the recipient government.

Payment Disclosure

(5) When a resource extraction issuer proportionately consolidates an entity or operation under U.S. GAAP or IFRS, as applicable, the resource extraction issuer must disclose its proportionate amount of the payments made by such entity or operation pursuant to this Item and must indicate the proportionate interest.

(6) Although an entity providing only services to a resource extraction issuer to assist with exploration, extraction, processing or export would generally not be considered a resource extraction issuer, where such a service provider makes a payment that falls within the definition of "payment" to a government on behalf of a resource extraction issuer, the resource extraction issuer must disclose such payment.

(7) "Processing," as used in Item 2.01, would include, but is not limited to, midstream activities such as the processing of gas to remove liquid hydrocarbons, the removal of impurities from natural gas prior to its transport through a pipeline, and the upgrading of bitumen and heavy oil, through the earlier of the point at which oil, gas, or gas liquids (natural or synthetic) are either sold to an unrelated third party or delivered to a main pipeline, a common carrier, or a marine terminal. It would also include the crushing and processing of raw ore prior to the smelting phase. It would not include the downstream activities of refining or smelting.

(8) A resource extraction issuer must disclose payments made for taxes on corporate profits, corporate income, and production. Disclosure of payments made for taxes levied on consumption, such as value added taxes, personal income taxes, or sales taxes, is not required.

(9) Royalties include unit-based, value-based, and profit-based royalties. Fees include license fees, rental fees,

entry fees, and other considerations for licenses or concessions. Bonuses include signature, discovery, and production bonuses.

(10) Dividends paid to a government as a common or ordinary shareholder of the resource extraction issuer that are paid to the government under the same terms as other shareholders need not be disclosed. The resource extraction issuer, however, must disclose any dividends paid in lieu of production entitlements or royalties.

(11) If a resource extraction issuer makes an in-kind payment of the types of payments required to be disclosed, the resource extraction issuer must disclose the payment. When reporting an in-kind payment, a resource extraction issuer must determine the monetary value of the in-kind payment and tag the information as "in-kind" for purposes of the currency. For purposes of the disclosure, a resource extraction issuer must report the payment at cost, or if cost is not determinable, fair market value and must provide a brief description of how the monetary value was calculated. If a resource extraction issuer makes an in-kind production entitlement payment under the rules and then repurchases the resources associated with the production entitlement within the same fiscal year, the resource extraction issuer must report the payment using the purchase price (rather than at cost, or if cost is not determinable, fair market value). If the in-kind production entitlement payment and the subsequent repurchase are made in different fiscal years and the purchase price is greater than the previously reported value of the in-kind payment, the resource extraction issuer must report the difference in values in the latter fiscal year (assuming the amount of that difference exceeds the de minimis threshold). In other situations, such as when the purchase price in a subsequent fiscal year is less than the in-kind value already reported, no disclosure relating to the purchase price is required.

Interconnected Agreements

(12) The following is a non-exclusive list of factors to consider when determining whether agreements are "operationally and geographically interconnected" for purposes of the definition of "project": (a) whether the agreements relate to the same resource and the same or contiguous part of a field, mineral district, or other geographic area; (b) whether the agreements will be performed by shared key personnel or with shared equipment; and (c) whether they are part of the same operating budget.

Section 3—Exhibits

Item 3.01 Exhibits

List below the following exhibits filed as part of this report:

Exhibit 1.01—Conflict Minerals Report as required by Items 1.01 and 1.02 of this Form.

Exhibit 2.01—Resource Extraction Payment Report as required by Item 2.01 of this Form.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the duly authorized undersigned.

(Registrant)

____

By (Signature and Title)*

____

(Date)

*Print name and title of the registrant's signing executive officer under his or her signature.

* * * * *

By the Commission.

Dated: June 27, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–15676 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 144 July 27, 2016

Part III

Securities and Exchange Commission

17 CFR Parts 240 and 242
Disclosure of Order Handling Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–78309; File No. S7–14–16]

RIN 3235–AL67

Disclosure of Order Handling Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing to amend Rules 600 and 606 of Regulation National Market System (''Regulation NMS'') under the Securities Exchange Act of 1934 (''Exchange Act'') to require additional disclosures by broker-dealers to customers about the routing of their orders. Specifically, with respect to institutional orders, the Commission is proposing to amend Rule 606 of Regulation NMS to require a broker-dealer, upon request of its customer, to provide specific disclosures related to the routing and execution of the customer's institutional orders for the prior six months. The Commission also is proposing to amend Rule 606 of Regulation NMS to require a broker-dealer to make publicly available aggregated information with respect to its handling of customers' institutional orders for each calendar quarter. With respect to retail orders, the Commission is proposing to make targeted enhancements to current order routing disclosures under Rule 606 by requiring limit order information to be broken down into marketable and non-marketable categories, requiring the disclosure of the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received by a broker-dealer from certain venues, requiring broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with certain venues that may influence their order routing decisions, and eliminating the requirement to divide retail order routing information by listing market. In connection with these new requirements, the Commission is proposing to amend Rule 600 of Regulation NMS to include a number of newly defined terms which are used in the proposed amendments to Rule 606. The Commission is also proposing to amend Rules 605 and 606 of Regulation NMS to require that the public order execution and order routing reports be kept publicly available for a period of three years and to make conforming changes to Rule 607. Finally, the Commission is proposing to amend Rule 3a51–1(a) under the Exchange Act; Rule 13h–1(a)(5) of Regulation 13D–G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), 607(a)(1), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI, to update cross-references as a result of this proposed rule.

DATES: Comments should be received on or before September 26, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–14–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–14–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Theodore S. Venuti, Assistant Director, at (202) 551–5658, Arisa Tinaves Kettig, Senior Special Counsel, at (202) 551–5676, Steve Kuan, Special Counsel, at (202) 551–5624, Amir Katz, Special Counsel, at (202) 551–7653, Chris Grobbel, Special Counsel, at (202) 551–5491, or Andrew Sioson, Attorney-Advisor, at (202) 551–7186 Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing: (1) Amendments to Rules 600 and 606 under the Exchange Act [17 CFR 242.600 and 202.606] to require additional disclosures by broker-dealers to customers about the routing of their orders; (2) amendments to Rule 605 [17 CFR 242.605] to require that the public order execution and order routing reports be kept publicly available for a period of three years; and (3) conforming changes and updating cross-references in Rule 3a51–1(a) under the Exchange Act [17 CFR 240.3a51–1(a)], Rule 13h–1(a)(5) of Regulation 13D–G [17 CFR 240.13h–1(a)(5)], Rule 105(b)(1) of Regulation M [17 CFR 242.105(b)(1)] Rules 201(a) and 204(g) of Regulation SHO [17 CFR 242.201(a) and 242.204(g)], Rules 600(b), 602(a)(5), 605, 607(a)(1), and 611(c) of Regulation NMS [17 CFR 242.600(b), 242.602(a)(5), 242.605, 242.607(a)(1), and 242.611(c)], and Rule 1000 of Regulation SCI [17 CFR 242.1000].

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I. Introduction

Institutional customers have a compelling interest in the order handling decisions of their executing brokers as they monitor the execution quality of their orders, both from the standpoint of the price received and to evaluate the potential negative effects of information leakage and conflicts of interest.[1] This focus on order handling has intensified in recent years as routing and execution practices have evolved as markets have become more automated, dispersed, and complex.[2] Historically, there was a substantial manual component involved in the routing and execution of institutional customers' orders. Today, however, institutional orders tend to be routed and executed using sophisticated order execution algorithms developed by broker-dealers or others that break up large institutional orders into smaller "child" orders, and smart order routing systems to route those child orders to the full range of trading centers in the national market system, including exchanges, "dark pool" alternative trading systems ("ATSs"), other ATSs, and internalizing broker-dealers.[3] These order routing and execution algorithms use a wide variety of methods, ranging from non-time-sensitive passive strategies to aggressive liquidity-taking strategies, to achieve the trading goals of the institutional customer. Although certain advantages flow from technological advancements and the increase in number of venues, the Commission preliminarily believes that the complexity of order execution algorithms and smart order routing systems, and the multiplicity of venues to which broker-dealers may route orders or send actionable indications of interest, have made it increasingly difficult for institutional customers to assess the impact particular order routing strategies may have on the quality of their executions, or the risks presented by any resulting information leakage or broker-dealer conflicts of interest.

Changes to market structure and routing practices have led many institutional customers to demand more specific and detailed institutional order handling information from their broker-dealers. The Commission notes that for purposes of this proposing release, the use of ''institution'' or ''institutional'' shall refer to an institutional order, as proposed to be defined in proposed Rule 600(b)(31),[4] and the term ''institutional customer'' shall refer to a sender of an institutional order.

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[1] An institutional customer includes, for example, pension funds, mutual funds, investment advisers, insurance companies, investment banks, and hedge funds.

[2] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252, 72397 (December 5, 2014) ("Regulation SCI Adopting Release") (stating that markets have evolved "to become significantly more dependent on sophisticated, complex, and interconnected technology"); *see also* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) ("Concept Release on Equity Market Structure") (stating that "the current market structure can be described as dispersed and complex: (1) Trading volume is dispersed among many highly automated trading centers that compete for order flow in the same stocks; and (2) trading centers offer a wide range of services that are designed to attract different types of market participants with varying trading needs").

[3] A "trading center" means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. *See* 17 CFR 242.600(b)(78).

The Commission understands that institutional customer requests range from detailed information about the handling of specific institutional orders to more generic data about the order routing strategies pursued by the broker-dealer for institutional customers and the venues to which their orders are routed and executed. The level of detail of the information provided tends to vary by broker-dealer, as well as the particular institutional customer, some of whom may have the wherewithal and desire to digest and evaluate voluminous order handling information and some of whom may not.

The Commission preliminarily believes that market-based efforts to provide institutional order handling transparency may not be sufficient insofar as smaller institutional customers may lack the bargaining power or the resources to demand relevant order handling information from their broker-dealers. In addition, while many institutional customers regularly conduct, directly or through a third-party vendor, transaction cost analysis (''TCA'') of their orders to assess execution quality against various benchmarks, the Commission preliminarily believes that the comprehensiveness of such analysis could be enhanced with more granular order handling information. The Commission also preliminarily believes that standardizing the baseline information provided by broker-dealers could help ensure the wide availability of meaningful order handling information that may be produced in an efficient and cost-effective manner.[5]

In light of the foregoing, the Commission preliminarily believes that standardized baseline institutional order handling information should be required to be made available to the institutional customer upon request so that the institutional customer can more effectively assess the impact of order routing decisions on the quality of their executions, including the risks of information leakage and potential conflicts of interest.[6] Further, the Commission preliminarily believes that public disclosure of institutional order handling information, on an aggregated basis, could assist market participants in comparing the routing services of multiple broker-dealers, and the relative merits of competing trading centers, and facilitate institutional customers' ability to make informed decisions when engaging the services of a broker-dealer. The Commission preliminarily believes that the proposal would further encourage broker-dealers to minimize information leakage when executing an institutional order. The Commission preliminarily believes that the potential benefits of public disclosure of aggregated institutional order handling information should justify any potential negative competitive impact such disclosure may have on broker-dealers.

The changes to market structure have impacted the market for customer order routing and execution services. Currently, a ''customer order'' means an order to buy or sell an NMS security that is not for the account of a broker-dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for an NMS security that is an option contract and a market value of at least $200,000 for any other NMS security.[7] As such, the term ''customer order,'' when used in Regulation NMS, only refers to smaller-sized orders. As discussed in more detail below, the Commission is proposing to rename ''customer order'' to ''retail order'' and for purposes of this proposing release, the term ''retail customer'' shall refer to a sender of a retail order.

As discussed below, the rise in the number of trading centers and the introduction of new fee models for execution services have intensified competition for retail order flow and created new potential conflicts of interest for broker-dealers. The Commission preliminarily believes that simplified and enhanced disclosures for retail orders, particularly with respect to financial inducements from trading centers, should assist retail customers in evaluating better the order routing services of their broker-dealers. Additionally, public transparency of retail orders should drive competition as broker-dealers seek to compete on the basis of the quality of their order routing and execution services as well as their ability to manage conflicts of interest.

The Commission therefore is proposing amendments to Rules 600[8] and 606[9] of Regulation NMS to require, for the first time, disclosures by broker-dealers about their handling of institutional orders, and enhancements to existing disclosures with respect to retail orders.[10] Specifically, with respect to institutional orders, the Commission is proposing to amend Rule 606 of Regulation NMS to require a broker-dealer, upon request of its customer, to provide specific disclosures, for the prior six months, broken down by calendar month, related to: (1) The handling of the customer's institutional orders at the broker-dealer; (2) the routing of the customer's institutional orders to various trading centers; (3) the execution of those orders, and the quality of execution; and (4) the extent to which such orders provided liquidity or removed liquidity, and the average transaction rebates received or fees paid by the broker-dealer. This information would be provided for each venue, and would *further* be *divided into* passive, neutral, and aggressive order routing strategies. In connection with this new requirement, the Commission is proposing to amend Rule 600 of Regulation NMS to include definitions of the terms ''institutional order,'' ''actionable indication of interest,'' ''orders providing liquidity,'' and ''orders removing liquidity,'' and to rename the defined term ''customer order'' to ''retail order.'' The Commission also is proposing to amend Rule 606 of Regulation NMS to require a broker-dealer to make publicly available the foregoing information, on an aggregated basis, for all of its customers' institutional orders, for each calendar quarter, broken down by calendar month, and keep such reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

Further, with respect to retail orders, the Commission preliminarily believes that the existing Rule 606 disclosures should be updated to require that more relevant routing information is provided to retail customers. Specifically, the Commission is proposing to: (1) Require limit order information to be split into marketable [11] and non-marketable [12] categories; (2) require more detailed disclosure of the net aggregate amount of any payments received from or paid to certain trading centers; (3) require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with certain venues that may influence its order routing decisions; (4) require that broker-dealers keep retail order routing reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site; and (5) eliminate the requirement to group retail order routing information by listing market.

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[4] *See infra* Section III.A.1.

[5] There have been recent efforts by representatives of broker-dealers and institutional customers to develop a template of baseline order routing disclosure, and these efforts are reflected in a letter from the Investment Company Institute, the Managed Funds Association, and the Securities Industry and Financial Markets Association (collectively, the ''Associations''). *See* Letter to Mary Jo White, Chair, Commission, from Dorothy M. Donohue, Deputy General Counsel, Investment Company Institute, Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, and Randy Snook, Executive Vice President, Securities Industry and Financial Markets Association, dated October 23, 2014 (''Associations Letter''), *available at http://www.sec.gov/comments/s7-02-10/s70210-428.pdf.*

[6] *See infra* Sections II.C.3. and II.C.4.

[7] *See* 17 CFR 242.600(b)(18).

[8] 17 CFR 242.600.

[9] 17 CFR 242.606.

[10] The Commission notes that the proposed amendments to Rule 606, if adopted, would not limit any other obligations that the broker-dealer may have under applicable federal securities laws, rules, or regulations, including the anti-fraud provisions of the federal securities laws.

Finally, consistent with the proposed amendments to Rule 606, the Commission is proposing to amend Rule 605 to require market centers [13] to keep execution reports required by the rule posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. With respect to Rule 607, the Commission is proposing to amend the rule text to reflect the renaming of the defined term "customer order" to "retail order," but is making no substantive changes to the defined term. As noted above, the Commission is proposing amendments to other rules to update cross-references as a result of this proposal.[14]

The release first provides relevant background on Rule 606 and then discusses the technological advances and regulatory changes that have prompted the proposal. The release then discusses, in detail, the proposed amendments to Rules 600, 605, 606, and 607 including the new institutional order handling disclosures that would be required from broker-dealers.

II. Current Practices and Regulation and the Need for Enhanced Disclosures

A. Background on Rule 606

The Commission proposed and adopted Rule 11Ac1–6,[15] now known as Rule 606 of Regulation NMS,[16] in 2000, to improve public disclosure of order routing practices. Rule 606 arose out of the Commission's extended inquiry into market fragmentation, defined at the time as the trading of orders in multiple locations without interaction among those orders.[17] In adopting Rule 606, the Commission stated that "[i]n a fragmented market structure with many different market centers trading the same security, the order routing decision is critically important, both to the individual investor whose order is routed and to the efficiency of the market structure as a whole. The decision must be well-informed and fully subject to competitive forces." [18] The Commission further stated that public disclosure of order routing practices "could provoke more vigorous competition on . . . order routing performance." [19]

In adopting Rule 606, the Commission limited its scope to smaller orders.[20] Larger orders were excluded in recognition of the fact that, at the time, generalized information for order routing practices would be more useful for smaller orders, which tended to be handled in a more homogenous manner.[21] Because institutional orders required more individualized, manual handling, they were excluded from Rule 606 in recognition of the fact that, at that time, providing standardized order handling statistics would be neither practical nor useful in this context.[22]

Thus, in its current form, Rule 606(a) applies only to retail-sized orders, and requires every broker-dealer to publicly provide a quarterly report on its routing of non-directed orders [23] in NMS securities.[24] Currently, the report includes the following information, separated by listing market for NMS stocks,[25] and in the aggregate for NMS securities that are option contracts: (1) The percentage of total retail orders that were non-directed orders, and the percentages of total non-directed orders that were market orders, limit orders, and other orders; (2) the identity of the ten venues to which the largest number of total non-directed orders were routed for execution and of any venue to which five percent or more of such orders were routed (collectively, "Specified Venues") and the percentage of total non-directed orders routed to each Specified Venue, and the percentages of total non-directed market orders, total non-directed limit orders, and total non-directed other orders that were routed to each Specified Venue; and (3) a discussion of the material aspects of the broker-dealer's relationship with each Specified Venue, including a description of any payment for order flow[26] or profit-sharing relationship arrangements.[27]

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[11] A "marketable limit order" is any buy order with a limit price equal to or greater than the national best offer at the time of order receipt, or any sell order with a limit price equal to or less than the national best bid at the time of order receipt. 17 CFR 242.600(b)(39). "National best bid and national best offer" means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time). 17 CFR 242.600(b)(42).

[12] The Commission is proposing in new Rule 600(b)(51) to define "non-marketable limit order" to mean "any limit order other than a marketable limit order", as discussed in more detail below. *See infra* Section III.B.1.

[13] A "market center" means any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association. *See* 17 CFR 242.600(b)(38).

[14] The Commission is proposing to amend Rule 3a51–1(a) under the Exchange Act; Rule 13h-1(a)(5) of Regulation 13D–G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), 607(a)(1), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI.

[15] *See* Securities Exchange Act Release Nos. 43084 (July 28, 2000), 65 FR 48406 (August 8, 2000) ("Rule 606 Predecessor Proposing Release") and 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000) ("Rule 606 Predecessor Adopting Release").

[16] The Commission re-designated Rule 11Ac1–6 as Rule 606 when adopting Regulation NMS in 2005. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37538 (June 29, 2005) ("Regulation NMS Adopting Release"). For clarity, when this release discusses the proposal of Rule 606 or the adoption of Rule 606, it is referring to the Rule 606 Predecessor Proposing Release and Rule 606 Predecessor Adopting Release, *supra* note 15, respectively.

[17] *See* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (Commission request for comment, included in a notice of a proposed self-regulatory organization ("SRO") rule change) ("Fragmentation Release").

[18] *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75415.

[19] *Id.* at 75417. Industry participants commenting in response to the Concept Release on Equity Market Structure, *supra* note 2, have expressed the view that increased order routing transparency has led to increased competition. *See, e.g.,* Letters to Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, Inc., dated April 30, 2010 ("NASDAQ Letter"), at 21 (stating that NASDAQ shares the Commission's belief that transparency promotes competition); from Christopher Nagy, Managing Director Order Strategy, Co-Head of Government Relations, TD Ameritrade and John S. Markle, Deputy General Counsel, Co-Head of Government Relations, TD Ameritrade, dated April 21, 2010 ("TD Ameritrade Letter"), at 3–4 (stating that added transparency has driven brokers to continuously seek better executions for clients).

[20] The Commission limited the scope of Rule 606 to smaller orders by defining a customer order as an order to buy or sell an NMS security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for an NMS security that is an option contract and a market value of at least $200,000 for any other NMS security. *See* 17 CFR 242.600(b)(18).

[21] *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75426.

[22] *See id.*

[23] A "non-directed order" means any customer order other than a directed order. *See* 17 CFR 242.600(b)(48). A "directed order" means a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution. *See* 17 CFR 242.600(b)(19). *See also supra* note 7 and accompanying text. The Commission is proposing to rename "customer order" as "retail order," which would carry through to these two definitions. *See infra* Section III.B.5.

[24] An "NMS security" is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR 242.600(b)(46).

[25] An "NMS stock" is any NMS security other than an option. *See* 17 CFR 242.600(b)(47).

Rule 606(b) currently requires every broker-dealer to provide customers, upon request, specific information about the routing of their orders. Specifically, upon request, every broker-dealer shall: (1) Disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders; and (2) notify customers in writing at least annually of the availability of this information upon request.

B. Changes in Order Handling Practices

U.S. equity market structure has changed significantly since the adoption of Rule 606. Today it is highly automated, dispersed among myriad trading centers, and more complex than it was in 2000.[28] The primary drivers of this market transformation have been the rapid and ongoing evolution of technologies for generating, routing, and executing orders, and the impact of regulatory changes.[29] In 2000, a large proportion of order flow in listed equity securities was routed to a few, mostly manual, trading centers, and it was rare that such orders would be re-routed to other venues.[30] In contrast, today, trading in the U.S. equity markets is spread among a number of highly automated trading centers: 12 registered exchanges, more than 40 ATSs,[31] and over 200 over-the-counter ("OTC") market-makers,[32] and the routing and re-routing of orders to multiple venues is common. These venues offer a wide range of services and pricing structures that are designed to attract different types of market participants with varying trading needs.[33]

According to a staff report published in 1994, prior to the emergence and growth of electronic markets, institutional customers would rely primarily on exchange floor brokers or upstairs block positioners to execute their large orders.[34] Typically, exchange floor brokers or upstairs block positioners would negotiate large trades off the exchange (often referred to as "upstairs") and subsequently execute or "print" on the exchange—subject to auction market procedures allowing the limit order book or the trading crowd to participate in the trade and exposing the order to the market.[35] The nature of floor trading activity and upstairs block positioning allowed broker-dealers to manually exercise judgment and expertise to achieve best execution, and typically involved strategies that were designed to conceal information about an institutional customer's trading interest to potential counterparties to *minimize price impact.*

In today's electronic markets, however, the manual handling of institutional orders is increasingly rare, and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems. These sophisticated algorithms and systems decide the timing, pricing, and quantity of orders routed to the various trading centers.[36] Broker-dealers often use order execution algorithms to divide a large "parent" order of an institutional customer into many smaller "child" orders, and route the child orders over time to different trading centers in accordance with a particular strategy.[37] Such algorithms may be "aggressive," and generally seek to take liquidity quickly at many different trading centers, or they may be "passive," and generally submit resting orders at one or more trading centers and await executions at favorable prices, or they may be "neutral," and seek to take liquidity or submit resting orders depending on market conditions.[38] In addition, some broker-dealers utilize indications of interest to notify external liquidity providers of trading interest at that broker-dealer.

C. Need for Enhanced Disclosures for Institutional Orders

1. Market Complexity

Institutional customers have long focused on the execution quality of their large orders, and the potential impacts from information leakage and conflicts of interest faced by their broker-dealers. While there is some indication that enhancements to electronic order routing systems and processes generally have led to improved execution quality in many cases,[39] the operation of order routing systems and processes often is opaque to customers placing institutional orders, who may not have sufficient information to understand how, where, and why their orders are routed to specific venues, and whether particular order routing and execution strategies, whether or not selected by the customer, are consistent with the customer's expectations.

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[26] "Payment for order flow" has the meaning provided in 17 CFR 240.10b-10. *See* 17 CFR 242.600(b)(54). "Payment for order flow" means any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation. *See* 17 CFR 240.10b-10(d)(8).

[27] A "profit-sharing relationship" means any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders. *See* 17 CFR 242.600(b)(56).

[28] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3594. *See also* Regulation SCI Adopting Release, *supra* note 2, at 72397.

[29] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3594 ("Changes in market structure also reflect the markets' response to regulatory actions such as Regulation NMS, adopted in 2005, the Order Handling Rules, adopted in 1996, as well as enforcement actions, such as those addressing anti-competitive behavior by market makers in NASDAQ stocks").

[30] *See* Fragmentation Release, *supra* note 17.

[31] Data compiled from Forms ATS–R filed with the Commission as of the end the fourth quarter of 2014.

[32] More than 200 broker-dealers (excluding ATSs) have identified themselves to the Financial Industry Regulatory Authority ("FINRA") as market centers that must provide monthly reports on order execution quality under Rule 605 of Regulation NMS (list *available at http://apps.finra.org/datadirectory/1/marketmaker.aspx*).

[33] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3594.

[34] *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments, at II–14 (January 1994).

[35] *Id.* at II–14–15.

[36] *See, e.g.,* Terrence Hendershott, Charles Jones, and Albert Menkveld, *Does Algorithmic Trading Improve Liquidity,* 66 Journal of Finance 1 (February 2011).

[37] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3602.

[38] *See id.*

[39] *See, e.g.,* Letter to Secretary, Commission, from Greg O'Connor, Compliance Manager, Wolverine Trading, LLC, dated April 21, 2010 ("Wolverine Trading Letter"), at 5 (stating that technological advancements have led to improved markets and executions as indicated by tighter spreads, lower trading costs, and more liquidity). *See also* Thierry Foucault and Albert J. Menkveld, *Competition for Order Flow and Order Routing Systems,* 63 Journal of Finance 119, 121 (February 2008) (discussing that utilization of smart order routers reduces the incidence of trade-throughs and may encourage provision of liquidity).

As noted above, at the time of adoption of Rule 606, institutional orders generally were handled by an exchange floor broker or upstairs block positioner. The risks of information leakage and broker-dealer conflicts of interest existed with manual order handling, but because the execution alternatives were fewer and simpler, less data was necessary for institutional customers to evaluate those risks and evaluate broker-dealer performance. Now, however, because of the complexity of order execution algorithms and smart order routing systems, and the wide variety of venues to which broker-dealers may route institutional orders or send actionable indications of interest, access to data is important for institutional customers to assess the impact a broker-dealer's order routing strategies may have on the quality of their executions and the risks presented by any resulting information leakage or broker-dealer conflicts of interest.

Institutional customers increasingly have been expressing concerns regarding the difficulty in obtaining and comparing certain information across broker-dealers and venues, and understanding how their institutional orders are handled by broker-dealers, and have called for enhanced order handling disclosures.[40] Institutional customers have cited concerns, among other things, about the extent to which broker-dealer routing decisions are influenced by incentives offered by trading centers to attract order flow, that inefficiencies in order execution algorithms and smart order routing systems may lead to information leakage, and that the complexity and opacity of order routing practices frustrate the ability to monitor execution quality. Importantly, a variety of other market participants, including broker-dealers, also have expressed support for enhanced and consistent disclosure of institutional order handling information.[41]

In the absence of a Commission rule, some institutional customers today have taken steps to acquire more information about the nature and number of venues to which their orders are routed or exposed.[42] For example, some institutional customers, using detailed questionnaires, request and receive information regarding order routing strategies used by their broker-dealers and the venues to which their broker-dealers route orders. In addition, more sophisticated institutional customers often request and receive granular data about the handling of individual orders.[43] The level of detail of the information provided by broker-dealers tends to vary depending on both the broker-dealer and the particular institutional customer, some of which may have the ability and desire to digest and evaluate voluminous individual order handling information and some of which may not. Of concern to the Commission, however, is the risk that some smaller institutional customers may not have the bargaining power to demand relevant order handling information from their broker-dealers. The Commission also understands that while some broker-dealers are willing and able to provide order handling information, the non-standardized and non-transparent nature of the data limits its effectiveness. Moreover, from the standpoint of the broker-dealers, responding to different institutional customers could be time-consuming and costly, as the broker-dealers typically need to prepare custom responses to different questions from each institutional customer who requests order handling information.[44] Accordingly, the Commission preliminarily believes that by requiring standardization of such reports, order handling data could potentially be generated in a more efficient and cost-effective manner, and provided as a matter of course to the benefit of all institutional customers.

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[40] *See* Associations Letter, *supra* note 5, at 2.

[41] The Commission received letters addressing these issues in response to requests for comment on the Concept Release on Equity Market Structure, *supra* note 2 (comment letters *available at http://www.sec.gov/comments/s7-02-10/s70210.shtml*). *See* Letters to Secretary, Commission, from Christopher Nagy, CEO, and Dave Lauer, President, KOR Group LLC, dated September 23, 2014 ("KOR Trading Letter II"), at 1–2 (stating Rule 606 is severely outdated, has no coverage of large orders, and should be updated to cover all orders); from Richie Prager, Managing Director, Head of Trading & Liquidity Strategies, et al., BlackRock, Inc., dated September 12, 2014 ("BlackRock Letter"), at 3 (stating broker-dealers should be required to provide periodic standardized reports on order routing and execution metrics to both retail and institutional investors); from Christopher Nagy, CEO, and Dave Lauer, President, KOR Trading LLC, dated April 4, 2014 ("KOR Trading Letter I"), at 2 (stating Rule 606 has become increasingly outdated as a result of the increasing complexity of order-types as well as the speed of routing and routing practices and Rule 606 should be updated to cover 100% of order flow received, including block transactions); from Kimberly Unger, Esq., Executive Director, Security Traders Association of New York, Inc., dated April 30, 2010 ("STA Letter"), at 8 (stating that since the adoption of Rule 606 in 2000, technological advancements have made some of the measurements in the Rule less meaningful and suggesting that 606 metrics be reviewed, amended, and updated, as needed); NASDAQ Letter, *supra* note 19, at 20 (stating Rule 606 has lagged behind technological advances that enhance market quality, which consequently renders the metrics utilized in Rule 606 less useful to investors, and further suggesting new metrics for inclusion on reports and refinements to current metrics); from Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated April 29, 2010 ("SIFMA Letter I"), at 13 (stating that the Commission should direct broker-dealers to provide institutional clients with standardized execution venue statistical analysis reports); from O. Mason Hawkins, Richard W. Hussey, Deborah L. Craddock, Jeffrey D. Engelberg, and W. Douglas Schrank, Southeastern Asset Management, Inc., dated April 28, 2010 ("SAM Letter"), at 7 (stating increased complexity in the marketplace has clouded order handling to the point where even educated customers are not completely confident as to how or why their orders are routed to specific venues in a specific way); from Janet M. Kissane, SVP—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext, dated April 23, 2010 ("NYSE Euronext Letter"), at 12, Appendix I at 3–4 (stating that U.S. equity market structure has changed substantially resulting in Rule 606 becoming outdated, and that Rule 606 reports do not capture information concerning block transactions and that the rule should be amended to include such information); Wolverine Trading Letter, *supra* note 39, at 4 (stating that the firm believes information currently required by Rule 606 reports is not as meaningful in the context of today's markets and that Commission staff should determine the types of statistics to add in order to improve usefulness of the reports); from Dan Mathisson, Managing Director, Credit Suisse Securities (USA) LLC, dated April 21, 2010 ("Credit Suisse Letter"), at 9 (stating that equity markets have changed unequivocally since 2000 when Rule 606 was adopted resulting in a need to update the Rule 606 reports); from Karrie McMillan, General Counsel, Investment Company Institute, dated April 21, 2010 ("ICI Letter"), at 8 (stating that currently institutional investors do not have ready access to complete information about their orders and the Commission should consider means to require new disclosures or enhance existing disclosures); from Michael Gitlin, Head of Global Trading, T. Rowe Price Associates, Inc.; David Oestreicher, Chief Legal Counsel, T. Rowe Price Associates, Inc.; and Christopher P. Hayes, Sr. Legal Counsel, T. Rowe Price Associates, Inc., dated April 21, 2010 ("T. Rowe Price Letter"), at 3 (supporting interest in revamping Rule 606 reports to provide additional data related to trading volumes and venues to both large and small investors); from Jennifer S. Choi, Assistant General Counsel, Investment Adviser Association, dated April 20, 2010 ("IAA Letter"), at 4 (stating the exclusion of large orders from Rule 606 reports limits the value of such reports to institutional investors); from Seth Merrin, Chief Executive Officer, Liquidnet; Howard Meyerson, General Counsel, Liquidnet; and Vlad Khandros, Corporate Strategy, Liquidnet, dated March 26, 2010 ("Liquidnet Letter"), at 2 (stating that institutional and retail investors do not have sufficient information regarding how their orders are handled, and empowering institutional traders with appropriate disclosures regarding the handling of large orders will empower institutions to make the best decisions for their customers). The Commission also received one letter relevant to this proposal in response to requests for comment on Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80997 (December 28, 2015) (File No. S7–23–15) ("NMS Stock ATS Proposing Release") (comment letter *available at http://www.sec.gov/comments/s7-23-15/s72315.shtml*). *See* Letter to Secretary, Commission, from David M. Weisberger, Managing Director, Markit, dated April 15, 2016 ("Markit Letter"), at 6–7 (stating order routing statistics required under Rule 606 should be enhanced to include basic metrics of execution quality for all categories of executed orders, separately report on routed and executed orders broken down by marketability, report on unexecuted routed orders, quantify net fees paid and rebates received by marketability category, and standardize the interpretation of "directed order"). A discussion of the letters relevant to this proposal is below. *See infra* Section II.F.

[42] *See* Associations Letter, *supra* note 5, at 2.

[43] *See, e.g.,* Memorandum from the Division of Trading and Markets regarding a March 4, 2011, meeting with representatives of Morgan Stanley with regard to the Concept Release on Equity Market Structure, dated May 7, 2011 ("TM Memo re Morgan Stanley I").

2. Assessing Best Execution

Broker-dealers have a variety of types of institutional customers that use their order routing services, including pension funds, mutual funds, investment advisers, insurance companies, investment banks, and hedge funds.[45] Due to the large size in which they trade, institutional customers generally are focused on ensuring that their broker-dealers are achieving best execution for their orders. Broker-dealers are legally required to obtain best execution of all customers' orders.[46] FINRA rules specifically require FINRA members to use reasonable diligence to ascertain the best market for the security, and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.[47] Under FINRA's rules, some of the factors a FINRA member must consider in determining whether it has used "reasonable diligence" are: (1) The character of the market for the security, such as the price, volatility, relative liquidity, and pressure on available communications; (2) the size and type of transaction; (3) the number of markets checked; (4) the accessibility of the quotation; and (5) the terms and conditions of the order which result in the transaction.[48]

Some institutional customers have direct relationships with their broker-dealers, whereas other institutional customers, such as mutual funds and pension funds, often employ investment advisers to buy and sell securities on their behalf. Investment advisers are fiduciaries to their clients (*e.g.*, mutual funds, pension funds) and have an obligation to act in the best interests of their clients.[49] Several obligations flow from an investment adviser's fiduciary duties, including, among other things, the obligation to seek best execution of clients' transactions where the investment adviser has the authority to select broker-dealers to execute client transactions.[50] As discussed above, however, the Commission preliminarily believes it has become more challenging in today's highly automated, complex, and dispersed markets for institutional customers and their advisers, in the absence of additional, standardized disclosure, to monitor the extent to which their broker-dealers are achieving best execution.

Today, broker-dealers are not required by rule to disclose specific order handling information regarding institutional orders. Instead, as noted above, the order handling information obtained by institutional customers is the subject of individualized negotiations with their broker-dealers, with the result that only a subset of institutional customers obtain order handling information and the scope of the information received varies widely. Accordingly, institutional customers and their advisers today monitor broker-dealers for best execution with substantially different levels of information, and potentially with varying degrees of effectiveness. For example, larger institutional customers may be better able to leverage their market size and position to obtain more detailed and complete disclosures from their broker-dealers, whereas smaller institutional customers may lack sufficient bargaining power to do so.

The Commission preliminarily believes that requiring enhanced order handling disclosures for all institutional orders would not only place small institutional customers on a more level playing field with large institutional customers, but also would create a uniform baseline for all institutional customers to obtain information on how large orders are handled. Widespread institutional access to standardized information could help institutional customers to more effectively assess the performance of their broker-dealers in handling their orders. This, in turn, could help improve the quality of broker-dealer routing practices, by, among other things, introducing more competitive forces so that broker-dealers are actively competing with each other to offer routing services that minimize information leakage and mitigate conflicts of interest.

3. Conflicts of Interest

The Commission has recognized that in a market structure with many competing trading centers, broker-dealers play a critical role in deciding where to route a customer's non-directed orders.[51] The Commission also has noted that a competitive environment may spur a trading center to offer economic incentives to broker-dealers to induce the routing of order flow to that trading center.[52] The Commission has recognized that broker-dealer order routing practices can significantly affect the competition among markets, and in adopting Rule 606 noted that the purpose of requiring disclosures concerning the relationships between a broker-dealer and the venues to which it routes orders was to inform customers to potential conflicts of interest that may influence the broker-dealer's order routing practices.[53] The Commission further explained that providing quantitative data to customers would provide them a clearer understanding of a broker-dealer's order routing practices.[54] While these previous statements were made in the context of retail order routing, the Commission preliminarily believes they are equally applicable to institutional order routing in today's equity market.

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[44] The Commission acknowledges that some institutional customers, particularly those that are larger and more sophisticated, may continue to request a customized report, even with the availability of standardized reports. The Commission understands that broker-dealers may respond to such requests for competitive reasons or provide such benefits as a service to its customers. Accordingly, the potential cost and time savings benefits of standardized reports would be reduced for these broker-dealers.

[45] *See supra* note 1.

[46] A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in self-regulatory organization rules and, through judicial and SEC decisions, the antifraud provisions of the federal securities laws. *See* Regulation NMS Adopting Release, *supra* note 16, at 37538. FINRA has codified a duty of best execution into its rules. *See* FINRA Rule 5310. Accordingly, violations by a broker of its duty of best execution expose the broker to potential liability under the antifraud provisions of the Exchange Act as well as potential discipline under applicable self-regulatory organization rules.

[47] *See* FINRA Rule 5310(a)(1) (Best Execution and Interpositioning).

[48] *Id.*

[49] *See, e.g.*, Section 206(2) of the Investment Advisers Act of 1940 that prohibits an investment adviser from engaging in any transaction, practice, or course of business, which operates as a fraud or deceit upon any client or prospective client. As such, investment advisers must act in "utmost good faith," provide full and fair disclosure of all material facts, and employ reasonable care to avoid misleading clients and prospective clients. *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194, 201 (1963).

[50] *See* Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Securities Exchange Act Release No. 23170 (April 23, 1986). An investment adviser must seek to obtain the execution of client transactions in such a manner that the client's total cost or proceeds are the most favorable under the circumstances. In particular, when seeking best execution, an adviser should consider the full range and quality of a broker's services when selecting broker-dealers to execute client trades, including, among other things, the broker's execution capability, commission rate, financial responsibility, responsiveness to the adviser, and the value of any research provided. *See id. See also Delaware Mgmt. Co.*, 43 SEC 392, 396 (1967).

[51] *See* Fragmentation Release, *supra* note 17, at 10582.

[52] *Id.*

[53] *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75427. The Commission has historically taken a disclosure-based approach when addressing conflicts of interest that arise from economic and other incentives provided to broker-dealers to induce the routing of order flow to a trading center, rather than prohibiting such incentives. *See, e.g., id.*

There are a number of potential conflicts of interest that arise for broker-dealers in the handling of institutional orders that may influence their order routing practices. One potential conflict of interest a broker-dealer may face in the handling of institutional orders involves the different pricing structures of trading centers. A prevalent pricing model in the current market structure is the so-called "maker-taker" model, which involves the use of access fees and rebates.[55] To incentivize market participants to provide liquidity, a trading center employing a maker-taker fee structure generally pays a per-share rebate to its members or participants to encourage them to display non-marketable liquidity-providing orders on its limit order book. If an execution occurs, the broker-dealer placing the liquidity-providing order (the "maker") generally receives a rebate. In contrast, the marketable order that removes liquidity (the "taker") generally is charged a slightly higher fee, to fund the rebate to the maker and provide a profit for the trading center.[56]

Broker-dealers that are members of an exchange or participants of an ATS with a maker-taker model pay fees to, and receive rebates from, the venue for each order, including an institutional order, that is executed on it, but generally do not directly pass those fees or rebates back to their institutional customers.[57] In situations where a broker-dealer can earn a rebate or pay a lesser fee for routing its customer's orders to a particular venue, a conflict of interest may exist between the broker-dealer's duty of best execution and its own direct economic interest.[58] Understanding how a broker-dealer manages this conflict of interest to ensure that its own self-interest does not compromise its best execution obligations is pertinent to institutional customers in evaluating execution quality.[59]

For example, with respect to non-marketable orders, the trading centers that pay the highest rebate for providing liquidity generally charge the highest fee for removing liquidity.[60] These venues are generally lower on the routing table[61] for broker-dealers seeking to remove liquidity due to the high take fee.[62] Thus, if a broker-dealer places an order seeking to provide liquidity at such a venue, the order may not receive an execution (or receive an execution only when the market moves against the order) due to the venue's low position on routing tables for removing liquidity because of the venue's high take fee. High rebate venues also are likely to attract a large number of non-marketable orders, so that the customer queue position, and likelihood of execution, may be lower than on low rebate venues.

A similar conflict of interest may exist for marketable orders.[63] Broker-dealers may seek to minimize trading costs by first routing orders to trading centers with the lowest take fees. However, these venues are likely to offer liquidity providers relatively low rebates so the available liquidity may be less than at a high rebate venue. Accordingly, the liquidity available to a marketable order routed to a low rebate venue may offer less size or fewer opportunities for price improvement than may be available at high rebate venues. Even where the broker-dealer ultimately routes a marketable order to other high take fee venues, prices can move quickly in today's highly automated, electronic markets, and broker-dealers may miss trading opportunities for an institutional customer by prioritizing low take fee venues in their routing tables.

Another potential conflict of interest may arise when a broker-dealer internalizes order flow,[64] routes order flow to affiliated venues, or routes order flow to venues with which it has payment for order flow arrangements. While constrained by its best execution obligation, a broker-dealer still may be incentivized to internalize customer order flow or route to an affiliated venue so that it can benefit from the execution by, among other things, capturing the trading profits or transaction fees. Internalization or execution at affiliated venues, however, may not offer the most favorable terms of execution. Likewise, a broker-dealer may be incentivized to first route customer order flow to venues with which it receives payment for order flow. Again, execution at such venues may not maximize the best execution opportunities of institutional orders. Accordingly, opportunities for internalization, or execution at affiliated venues or those with which the broker-dealers has payment for order flow arrangements, create additional potential conflicts of interest between the broker-dealer's duty of best execution and its own direct economic interest.[65]

As discussed further below, the Commission preliminarily believes these conflicts of interest could be better evaluated if institutional customers had access to additional information about their broker-dealers' order handling practices.

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[54] *See id.*

[55] *See, e.g.,* Memorandum from the SEC Division of Trading and Markets to the SEC Equity Market Structure Advisory Committee (October 20, 2015) ("Maker-Taker Memo"), *available at https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf. See also* Stanislav Dolgopolov, *The Maker-Taker Pricing Model and Its Impact on Securities Market Structure,* 8 Va. L. & Bus. Rev. 231, 232–33 (June 27, 2014) ("Dolgopolov"), *available at http://bit.ly/1mfme9M.*

[56] In contrast to the widespread typical maker-taker model described above, a few trading venues have adopted an inverted taker-maker pricing model, in which market participants are *assessed* a fee to provide liquidity in securities and provided a rebate to remove liquidity in securities. *See, e.g.,* NASDAQ OMX BX Fee Schedule (as of September 2015).

[57] *See, e.g.,* Robert Battalio, Shane A. Corwin, and Robert Jennings, *Can Brokers Have it All? On the Relation between Make-Take Fees and Limit Order Execution Quality,* at 3 (March 31, 2015) ("Battalio, Corwin, and Jennings Paper"), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2367462.*

[58] *See, e.g.,* Maker-Taker Memo, *supra* note 55, at 16. Finance professors Robert Battalio, Shane Corwin, and Robert Jennings' analysis of selected market data has suggested that a significant number of retail firms route non-marketable orders to the venue offering the highest rebate, and do so in a manner that the authors felt might not be consistent with the brokers' duty of best execution. *See* Battalio, Corwin, and Jennings Paper, *supra* note 57, at 31. Payment for order flow, including payments made to retail brokers from wholesale broker-dealers, presents a similar conflict of interest. The sale of order flow has been described by some industry participants as a revenue center that permits firms to receive payments from market makers for such order flow when they would otherwise have to pay taker fees. *See, e.g.,* Letter to Joseph Dear, Chairman, Investor Advisory Committee, SEC from Joseph Saluzzi and Sal Arnuk, Partners and Co-founders, Themis Trading LLC, dated January 27, 2014, *available at https://www.sec.gov/comments/265-28/26528-55.pdf,* at 2.

[59] *See, e.g.,* Maker-Taker Memo, *supra* note 55, at 18. This conflict may present itself despite the obligation of FINRA members to conduct a regular and rigorous review of their order routing to evaluate which trading venues offer the most favorable terms of execution, including execution price, execution speed, and the likelihood that the trade will be executed. *See, e.g.,* FINRA Rule 5310, Supplementary Material .09(b).

[60] *See, e.g.,* Maker-Taker Memo, *supra* note 55, at 18.

[61] Routing table refers to a broker-dealer's automated process for determining the specific trading venues to which a broker-dealer routes orders and the sequence in which the orders are routed.

[62] *See, e.g.,* Battalio, Corwin, and Jennings Paper, *supra* note 57, at 1; Maker-Taker Memo, *supra* note 55, at 18.

[63] *See, e.g.,* Maker-Taker Memo, *supra* note 55, at 19.

[64] Internalization is the process in which a broker-dealer fills an order to buy a security from its own inventory, or fills an order to sell by taking a security into its inventory.

[65] The Commission notes that it recently proposed amendments to the regulatory requirements in Regulation ATS of the Exchange Act applicable to certain ATSs that would require detailed public disclosures about the trading operations of the ATS and the activities of the broker-dealer that operates the ATS and its affiliates. *See* NMS Stock ATS Proposing Release, *supra* note 41.

4. Information Leakage

The Commission has acknowledged "the need of investors executing large size trades to control the information flow concerning their transactions." [66] Executing a large order in today's complex electronic markets poses many of the same issues and risks for institutional customers as existed in the manual markets they replaced, but also poses new challenges because of the variety of ways in which information leakage can occur in today's equity market structure. As a result, it continues to be challenging for institutional customers to trade in large size while minimizing the risks from information leakage. As noted above, institutional customers historically would use exchange floor brokers or upstairs block positioners to execute large orders.[67] In today's electronic markets, however, the manual handling of institutional orders is increasingly rare, and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems. At the same time, sophisticated market participants closely monitor order and execution activity throughout the markets, looking for patterns that signal the existence of a large institutional order, so that they can use that information to their trading advantage.

Each time an order is routed to a venue, and each time an actionable indication of interest is sent to a market participant, information is revealed about that order and the potential existence of a larger institutional order from which it may be derived. Accordingly, broker-dealers must balance the need to sufficiently expose the customer's trading interest to achieve execution, with the risk that such exposure might cause prices to move in a less favorable direction to the detriment of execution quality. Indeed, institutional customers have expressed concern that excessive routing [68] of their orders may increase the risk of information leakage without a commensurate benefit to execution quality.[69] Because information leakage may lead to higher execution costs for large size orders, the Commission preliminarily believes that additional disclosure would inform investors as to whether a broker-dealer's order routing strategy is potentially resulting in excessive routing and information leakage. As noted above, the Commission preliminarily believes that institutional order handling now has become more susceptible to the type of standard disclosures originally contemplated by Rule 606, and technological developments have made it easier for broker-dealers to produce it. Accordingly, standardized order handling disclosures should improve the ability of institutional customers to assess the potential risk of information leakage of their orders through a more detailed assessment of the number and types of venues to which their broker-dealers are routing their orders or transmitting actionable indications of interest, and the quality of executions that result therefrom.

The Commission preliminarily believes that the amendments to Rule 606 it is proposing today would help institutional customers more efficiently and effectively operate in the current equity market structure. As discussed in more detail below, the required disclosures would provide standardized information for institutional customers so that they can better: (1) Discern where their orders are exposed, routed, and executed; (2) assess their broker-dealers for best execution by examining order execution statistics; (3) monitor conflicts of interest of their broker-dealers with the additional financial incentives disclosures; and (4) assess information leakage with the routing of their orders.

D. Need for Public Reporting of Aggregated Institutional Order Information

As discussed above, there are no legal requirements for a broker-dealer to disclose institutional order handling information to its customers, either privately or publicly. The Commission preliminarily believes that the dearth of public information about each broker-dealer's institutional order handling practices may make efficient and effective comparisons about the nature and quality of services offered by broker-dealers more difficult. Without required public disclosure of aggregated institutional order handling information, institutional customers do not have information that could be used to evaluate, among other things, the venues to which broker-dealers route orders, the execution quality achieved at such venues, and the overall fees paid and rebates received for such executions. Public information on a broker-dealer's institutional order handling practices could both assist institutional customers in selecting one or more broker-dealers for order routing services and foster increased competition among broker-dealers to provide order routing services. Indeed, if institutional order handling information were publicly available to review and analyze, the Commission preliminarily believes that additional competitive forces could be brought to bear on broker-dealer institutional order routing services, thereby potentially enhancing the quality of such services.[70]

E. Need for Enhanced Disclosures for Retail Orders

As discussed above, the U.S. equity markets have evolved in recent years to become more automated, dispersed, and complex, and the resulting competition among trading centers has intensified practices to attract order flow, including retail order flow. Historically, trading centers have offered payment for order flow or other financial inducements to broker-dealers based upon whether the retail order flow is marketable or non-marketable. As a result, broker-dealers generally handle marketable and non-marketable retail orders differently. Indeed, whether a retail order is marketable or non-marketable will often determine where the broker-dealer routes the order. Certain broker-dealers route a large portion of marketable retail orders to OTC market makers with whom they have payment for order flow or other arrangements.[71] Non-marketable retail orders, on the other hand, are more frequently routed to exchanges with a "maker-taker" fee schedule, to capture a rebate when the non-marketable order is executed.[72]

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[66] *See* Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208, 61219 (November 23, 2009) ("Regulation of Non-Public Trading Interest Proposing Release"). For example, Rule 604(b) of Regulation NMS exempts specialists and over-the-counter market makers from displaying customer block size orders. *See* 17 CFR 242.604(b)(4). A block size order is an order of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000. 17 CFR 242.600(b)(9).

[67] *See supra* notes 34–35 and accompanying text.

[68] In this context, excessive routing occurs when an order is routed more than may be necessary to obtain full execution of the order. Each additional route of an order reveals information about that order.

[69] *See, e.g.*, Jacob Bunge, *A Suspect Emerges in Stock-Trade Hiccups: Regulation NMS*, Wall Street Journal, January 27, 2014 ("Bunge Article"), *available at http://www.wsj.com/articles/SB10001424052702303281504579219962494432336* (noting that in order to purchase 2.5 million shares of a stock, an institutional investor's brokers had to offer to purchase 750 million shares of the stock).

[70] In adopting Rule 606 in 2000, the Commission stated that public disclosure of order execution and order routing information could provoke more vigorous competition on execution quality and order routing performance. *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75417.

[71] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3606 (noting that Rule

Currently, Rule 606(a) does not require broker-dealers to segment their quarterly disclosures for limit orders between marketable and non-marketable orders. By only showing *aggregated* data on retail limit orders, customers have less visibility into the extent to which broker-dealers differentiate between marketable and non-marketable limit orders in their routing practices, and, if so, the potential impact of such practices. Accordingly, the Commission preliminarily believes that customers could better evaluate execution quality and potential conflicts of interest if broker-dealers were required to separately disclose more comprehensive information about how they route marketable and non-marketable limit orders to individual trading centers.

In addition, financial inducements to attract order flow from broker-dealers that handle retail orders have become more prevalent and for some broker-dealers such inducements may be a significant source of revenue.[73] The Commission understands that most broker-dealers that handle a significant amount of retail orders receive payment for order flow in connection with the routing of retail orders or are affiliated with an OTC market maker that executes the orders.[74] The Commission preliminarily believes that providing market participants with greater disclosure regarding the specific financial inducements received by a broker-dealer from various trading centers would enable market participants to better assess potential conflicts of interest its broker-dealers face when routing retail orders.

Under the quarterly disclosure obligations in current Rule 606(a), broker-dealers are required to discuss the material aspects of their relationship with each Specified Venue, including a description of any arrangement for payment for order flow or profit-sharing relationship. The current disclosure informs the market participants of a potential conflict of interest the broker-dealer may face, but the current rule does not require the broker-dealer to disclose specifics on the conflict, including financial inducements received from each Specified Venue, or transaction rebates received from exchanges and other trading centers.[75] The lack of detailed disclosure on the specifics of the financial inducements received from each Specified Venue make it more difficult for customers to assess a broker-dealer's management of any conflict of interest and the quality of its broker-dealer's routing and execution services.

Accordingly, the Commission preliminarily believes that requiring broker-dealers to report more detailed disclosure on the payments received and fees paid for marketable limit orders, non-marketable limit orders, and other order types at each Specified Venue would enable market participants to better assess the extent to which the broker-dealer is effectively managing the potential conflicts of interest, as well as the quality of their broker-dealer's retail order routing and execution services. The Commission also preliminarily believes that the description of any payment for order flow arrangements and profit-sharing relationships required to be disclosed in the quarterly report should be more comprehensive. As such, the Commission preliminarily believes that it would be appropriate to require broker-dealers to describe in their quarterly disclosure any terms of payment for order flow arrangements and profit-sharing relationships with each Specified Venue that may influence their order routing decisions.

Separately, in adopting Rule 606, the Commission required that retail routing reports be divided into three separate sections for NMS stocks listed on: NYSE, NASDAQ, and American Stock Exchange LLC.[76] The listing markets are now dominated by electronic trading and the handling of NMS stocks no longer varies materially based on the primary listing market.[77] As such, the Commission preliminarily believes that the requirement to separate the retail routing reports by primary listing market is outdated and does not provide useful information to customers. Accordingly, the Commission preliminarily believes that requiring retail routing reports to disclose the required information for NMS stocks as a whole would better inform market participants about the manner in which retail orders are routed in today's markets and should simplify the burdens to comply with the rule.

F. Comments on Equity Market Structure

The Commission periodically has examined the regulatory regime for order routing disclosure. The Commission published the Concept Release on Equity Market Structure in 2010, which requested comment on a wide range of issues. Among the issues specifically highlighted for comment were: (1) Whether Rule 606 should be updated and, if so, in what respects; (2) whether Rule 606 reports continue to provide useful information for investors and their broker-dealers in assessing the quality of order execution and routing practices; (3) whether Rule 606 should be updated to address the interests of institutional customers in efficiently executing large orders and, if so, what metrics would be useful; (4) whether institutional customers have sufficient information about the smart order routing services and order execution algorithms offered by their broker-dealers; and (5) whether a regulatory initiative to improve disclosure of these broker-dealer services would be useful

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606 statistics reveal that brokers with significant retail customer accounts send the great majority of non-directed marketable orders to OTC market makers that internalize executions, often pursuant to payment for order flow arrangements).

[72] As an example, during a fiscal quarter one large retail broker-dealer routed all non-marketable orders to one of two venues that "offered the highest rebates available in the market." *See Conflicts of Interest, Investor Loss of Confidence, and High Speed Trading in U.S. Stock Markets: Hearing Before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs,* U.S. Senate, 113th Cong. 48 (2014) ("Senate PSI Hearing") (testimony of Steven Quirk, Senior Vice President, TD Ameritrade). In addition to fee incentives that may affect routing decisions, another reason non-marketable retail orders may be routed to exchanges is the requirements of Rule 604 of Regulation NMS. Rule 604 of Regulation NMS requires, among other things, exchange specialists and OTC market makers to immediately display in their bid or offer both the price and the full size of each customer limit order that would improve their quoted price in a particular security. *See* 17 CFR 242.604.

[73] *See, e.g.,* Bradley Hope and Julie Steinberg, *Payments to Big Brokers Under Fresh Scrutiny,* Wall Street Journal, June 13, 2014, *available at http://blogs.wsj.com/moneybeat/2014/06/13/payments-to-big-brokers-under-fresh-scrutiny/* (stating that TD Ameritrade received $236 million in payment for order flow in 2013; that a spokesman for Charles Schwab Corporation estimated payment for order flow revenues of $100 million in 2013; and that E*Trade Financial Corporation stated in a regulatory filing it received $72.5 million in such revenues in 2013).

[74] *Id.*

[75] *See* Rule 606(a); *see also* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75427.

[76] *See* Rule 606 Predecessor Adopting Release, *supra* note 15. The American Stock Exchange is now known as NYSE MKT LLC. In October 2008, the American Stock Exchange LLC was renamed "NYSE Alternext US LLC." *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62). In March 2009, NYSE Alternext US LLC was renamed "NYSE Amex LLC." *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24). In May 2012, NYSE Amex LLC was renamed "NYSE MKT LLC." *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[77] *See* Letter to Secretary, Commission, from Manisha Kimmel, Managing Director, Financial Information Forum, dated October 22, 2014 ("FIF Letter"), at 3 (noting that with the introduction of automated trading centers and smart order routing as a result of Regulation NMS, order routing practices are no longer based on listing market).

and, if so, what type of initiative the Commission should pursue.[78]

The Commission received twenty-eight comment letters [79] that directly addressed order routing disclosures. The commenters provided a wide range of recommendations and many commenters made multiple recommendations regarding order routing disclosures.

1. General Need to Update Rule 606

A few commenters referred generally to existing drawbacks in Rule 606 and the need for improvements to Rule 606 without making specific recommendations. These commenters raised concerns regarding certain conflicts of interest present in order routing practices and the sufficiency of current disclosures under Rule 606, and stated that improvements to Rule 606 would provide more insight to investors and that the utility of Rule 606 was limited by a lack of disclosure.[80] Most commenters focused on specific recommendations to update various aspects of Rule 606.

2. Need for Rule 606 to be Modernized to Maintain Pace with Technological Advances

Many commenters cited technological changes in market structure as the basis for updating Rule 606.[81] These commenters touched upon the common theme that the disclosures required by Rule 606 had not kept pace with the technological advances that had taken place since the Rule's inception.

3. Requests for Specific Information and Standardized Disclosures

Most commenters identified specific metrics that broker-dealers should disclose, proposed model templates for disclosure, or called for disclosures to be made in a standardized fashion. Commenters generally requested additional information regarding order type usage and fill rates, marketable and non-marketable limit orders, and the use of indications of interest ("IOI"). Many commenters also requested more detailed disclosure of payment for order flow, including fees paid and rebates received.[82]

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[78] *See* Concept Release on Equity Market Structure, *supra* note 2.

[79] *See* Letters to Secretary, Commission, from Michael J. Friedman, General Counsel & Chief Compliance Officer, Trillium, dated November 7, 2014 ("Trillium Letter"); from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated October 24, 2014 ("SIFMA Letter II"); Associations Letter, *supra* note 5; KOR Trading Letter II, *supra* note 41; FIF Letter, *supra* note 77; BlackRock Letter, *supra* note 41; from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, dated September 9, 2014 ("CFA Letter"); KOR Trading Letter I, *supra* note 41; from Senator Edward E. Kaufman, United States Senate, dated August 5, 2010 ("Kaufman Letter"); from Greg Tusar, Managing Director, Goldman Sachs Execution & Clearing, L.P and Matthew Lavicka, Managing Director, Goldman, Sachs & Co., dated June 25, 2010 ("Goldman Sachs Letter II"); from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated April 30, 2010 ("Angel Letter II"); STA Letter, *supra* note 41; NASDAQ Letter, *supra* note 19; SIFMA Letter I, *supra* note 41; SAM Letter, *supra* note 41; from Eric W. Hess, Esq., General Counsel for Direct Edge, dated April 28, 2010 ("Direct Edge Letter"); NYSE Euronext Letter, *supra* note 41; from Jonathan D. Corpina, President, Organization of Independent Floor Brokers; Jennifer Lee, Vice President, Organization of Independent Floor Brokers; and Stephen O'Shaughnessy, Director, Organization of Independent Floor Brokers, dated April 21, 2010 ("IFB Letter"); Wolverine Trading Letter, *supra* note 39; Credit Suisse Letter, *supra* note 41; ICI Letter, *supra* note 41; T. Rowe Price Letter, *supra* note 41; TD Ameritrade Letter, *supra* note 19; IAA Letter, *supra* note 41; from Alan R. Shapiro, President and Chairman, The Transaction Auditing Group, Inc., dated April 19, 2010 ("TAG Letter"); Liquidnet Letter, *supra* note 41; from James J. Angel, Associate Professor, McDonough School of Business, Georgetown University; Lawrence E. Harris, Fred V. Keenan Chair in Finance, Professor of Finance and Business Economics, Marshall School of Business, University of Southern California; Chester S. Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Director, Center for Financial Markets, Tepper School of Business, Carnegie Mellon University, dated February 23, 2010 ("Angel Letter I"). *See also* TM Memo re Morgan Stanley I, *supra* note 43; Memorandum from the Division of Trading and Markets regarding a May 22, 2013, meeting with representatives of Morgan Stanley, dated May 22, 2013 ("TM Memo re Morgan Stanley II"); Memorandum from the Division of Trading and Markets regarding an October 1, 2015, meeting with representatives of Morgan Stanley, dated October 1, 2015 ("TM Memo re Morgan Stanley III"); Memorandum from the Office of Commissioner Walter regarding a June 30, 2010, meeting with representatives of the Managed Funds Association, dated July 19, 2010 ("Walter Memo"). The Commission also received one letter relevant to this proposal in response to requests for comment on the NMS Stock ATS Proposing Release, *supra* note 41. *See* Markit Letter, *supra* note 41.

[80] *See* IFB Letter, *supra* note 79, at 2 (questioning the existing inherent conflicts in the payment for order flow practice and asking whether disclosure requirements under existing Rule 606 are legally sufficient, and also noting that the required disclosures under Rule 606 do not shed light on fiduciary duties); Direct Edge Letter, *supra* note 79, at 2 (stating that "improvements to existing Rules 605 and 606 can be made to provide more detailed insight to investors"); TAG Letter, *supra* note 79, at 3 (stating "utility of the combination of Rules 605 and 606 to the individual investor is limited since the Rule 606 routing percentages coupled with the overall execution quality statistics in Rule 605 only give a general indication as to the results an individual investor can expect," and "[r]outing information and the associated material aspects of the relationship concerning the broker's arrangements, if any, with the various trading centers to which they route does not provide sufficient data to assess and compare").

[81] *See, e.g.,* NASDAQ Letter, *supra* note 19, at 20–21 (noting that Rule 606 has "never been amended despite changes that have revolutionized trading and the national market system, including the advent of decimal trading, the demise of trading floors and other manual trading, proliferation of private linkages, adoption of Regulation NMS, refinement of smart routers, modernization of high frequency trading and automation of dark pools," stating that 605 and 606 have "lagged behind technological advances that enhance market quality and consequently render the metrics utilized in Rule 605 and 606 less useful to investors," and questioning whether Rule 606 continues "to provide the level of transparency necessary to exert meaningful pressure on market centers to provide superior execution quality and routing practices."); NYSE Euronext Letter, *supra* note 41, at 12 (commenting that "as detailed in the Concept Release [on Equity Market Structure], the U.S. equity market structure has changed substantially and, as a result, we believe [Rule 606 has] become outdated"); *see also* KOR Trading Letter II, *supra* note 41, at 2, 5 (commenting that "[o]ver time and in particular with the adoption of Regulation NMS, [Rules 605 and 606] became increasingly outdated," and that Rule 606 has "eroded due to the increasing complexity of order-types as well as speed and routing practices in today's marketplace"); BlackRock Letter, *supra* note 41, at 3 (commenting that "rising complexity in market structure has made the existing reporting inadequate"); CFA Letter, *supra* note 79, at 21 (stating "it is unreasonable to expect that given the changes in speed, technology, complexity, and dark trading in our markets, retail investors would ever utilize them productively"); KOR Trading Letter I, *supra* note 41, at 1 (noting that while outdated, Rule 606 serves as the only current means to analyze routing behavior); STA Letter, *supra* note 41, at 8 (commenting that "technological advances have made some of the measurements in the rule less meaningful" and suggesting that Rule 606 metrics be reviewed, amended, and updated, as needed); SIFMA Letter I, *supra* note 41, at 16 (commenting that in its current form, Rule 606 does not provide "useful and meaningful comparative information to market participants, particularly individual investors, or regulators, and that the [rule] should be either modified or rescinded in light of market developments"); SAM Letter, *supra* note 41, at 7 (noting that while order handling used to be a transparent and simple process, "transparency has been sacrificed in the name of technological advancement and the evolution of market microstructure," and stating that the "enormous complexity introduced by this process has clouded order handling to the point where even educated customers are never completely confident how or why their orders are routed to specific venues in a specific way"); Wolverine Trading Letter, *supra* note 39, at 4 (noting that "the information currently required by [Rule 606] reports is not as meaningful in the context of today's markets" and that Commission staff should determine the types of statistics to add in order to improve usefulness of the reports); Credit Suisse Letter, *supra* note 41, at 9 (stating with regard to Rule 606 that "equity markets have unequivocally changed since 2000 when the rules were adopted, resulting in the need to update the reports," and providing the example that "the shortest execution report time category in the reports is 0–9 seconds. In today's trading, where market centers have begun clocking their executions in microseconds (millionths of a second) because milliseconds (thousandths of a second) were too slow, categorizing a 9 second execution in the top speed category renders the reports less meaningful than intended"); ICI Letter, *supra* note 41, at 7 (noting that "complexities in the current market structure and the associated difficulties in assessing market performance for investors"); TM Memo re Morgan Stanley III, *supra* note 79 (noting that "Order Handling and Execution Disclosure Rules have not been updated to address technological advances").

[82] *See, e.g.,* Markit Letter, *supra* note 41, at 6 (Rule 606 statistics should be enhanced to include basic metrics of execution quality for all categories of executed orders, separately report on routed and executed orders broken down by marketability, and quantify net fees paid and rebates received by marketability category); Associations Letter, *supra* note 5, at Annex A (attaching proposed template for

Some commenters expressed concern regarding information leakage and identified various metrics that could help customers determine whether a broker-dealer's routing strategy leaves orders vulnerable to information leakage.[83] Additionally, several industry commenters recommended disclosing separately routing statistics for marketable and non-marketable orders.[84]

4. Requests for Specific Disclosures for Institutional Orders

A number of commenters recommended specific order routing disclosures for institutional customers or questioned the usefulness of the current disclosure requirements to retail or institutional customers given that large orders are excluded from the rule.[85] Many commenters called specifically for the disclosure of order routing information to institutional customers, noting in various ways that the existing Rule 606 disclosures do not cover large orders and as a result institutional customers may not receive meaningful information about how their orders are routed.

5. Comments on Actionable Indications of Interest

As noted above, some comments on the Concept Release on Equity Market Structure called for the disclosure of information relating to a broker-dealer's use of IOIs.[86] The Commission has considered these comments, in addition to comments noted above on the Regulation of Non-Public Trading Interest Proposing Release, and is proposing to define actionable IOI.[87]

As discussed below, the Commission proposes to define the term "actionable

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enumerated, customer-specific institutional order routing disclosure); BlackRock Letter, *supra* note 41, at 3 (stating that revised Rule 605/606 "disclosures should provide greater transparency on marketable and non-marketable limit orders, order fill rates, sub-second execution horizons, pre-/post-trade price movement, alternative order type usage and total fees/rebates paid or received" and that such "metrics should also be available in a standardized template for individual customer activity, not just at an aggregate level by broker-dealer"); KOR Trading Letter I, *supra* note 41, at 5 (proposing a list of updates to Rule 606 including, *et al.*, information on marketable limit orders, total payments or charges to broker-dealers, reporting of the execution venue of all orders, and require average payments to be reported out to one one-hundredth of one penny (*i.e.*, four decimal places)); Goldman Sachs Letter II, *supra* note 79, at 10–11 (proposing disclosure of order routing information for orders that do not receive execution); Angel Letter II, *supra* note 79, at 7–9 (providing sample broker "report card" with eight metrics including percentage of orders executed inside the bid-ask spread); SAM Letter, *supra* note 41, at 7 (proposing eight categories of information that brokers/venues should disclose, including aggregate broker-level detail regarding specific venue market share based on both shares routed and shares executed and "payments, rebates, fees and fee breakpoints (all costs and payment for order flow arrangements) related to execution venues (routing broker or routing venue to venue)"); ICI Letter, *supra* note 41, at 7 (proposing the Commission require improved disclosure regarding order routing, including policies and procedures regarding the dissemination of information about a customer's order and trade information to facilitate a trade, including the use of IOIs, "external venues to which a broker routes, . . . the percentage of shares executed at each external venue, any ownership and other affiliations between the broker and any venues to which the broker routes orders," and "payments and other incentives provided or received (such as rebates) to direct order flow to particular trading venues"); TD Ameritrade Letter, *supra* note 19, at 7–8 (recommending, among other things, that Rule 606 disclosures include order type categories for " "Opening," "Marketable Limit," "Odd-lot," "Mixed Lot," "Stop Orders" and "IOC/IOI" and "Spreads" for Options," and "require brokers that internalize order-flow to include additional disclosure of payments made and overall profitability generated by the internalizing subsidiary internalizing that order-flow"); *see also* Trillium Letter, *supra* note 79, at 3 (suggesting that "Rule 606(b) should be enhanced to simply require brokers to disclose the unabridged order logs of requesting customers"); SIFMA Letter II, *supra* note 79, at 13 (suggesting that the Commission should consider a rule to "require broker-dealers to publish on their Web sites, on a monthly basis, a standardized disclosure report that provides an overview of key macro issues that are of interest to clients, potentially including: (i) Venues accessed, (ii) order types used on exchanges, (iii) order types supported on the broker-dealer's ATS (if applicable), (iv) fill rates (including internalization numbers, if applicable), (v) location of ATS/co-location footprint, and (vi) market data structure"); FIF Letter, *supra* note 77, at 3 (suggesting that market open, market close, stop orders, and odd lots be removed from the "other" category and listed in their own categories); KOR Trading Letter II, *supra* note 41, at 2 (suggesting Rule 606 should be expanded to mandate uniform disclosure); CFA Letter, *supra* note 79, at 21 (suggesting the reporting metrics in Rule 606 "should be modernized to provide the most relevant information that will allow market participants, regulators, and third-party analysts to assess the quality of order execution practices"); TM Memo re Morgan Stanley II, *supra* note 79, PowerPoint at 6 (suggesting Rule 606 should be modified to require standardized reports providing an "order life cycle audit trail, not just ultimate execution or first route venue"); Walter Memo, *supra* note 79, at 50–51 (the MFA suggested that Rule 606 could be updated to require a brokerage firm to "provide statistics giving execution times along with the percentages of orders filled at the quote, better than the quote, and worse than the quote, for different size buckets including odd lots"); STA Letter, *supra* note 41, at 8 (suggesting a "standardized set of metrics which might include revised speed of execution data, linkages and access to markets and other measurable data the disclosure of which will provide investors and traders with adequate information upon which to make execution and routing decisions"); NYSE Euronext Letter, *supra* note 41, at Appendix I (suggesting that the "percentage of volume routed and executed internally by a broker-dealer should be indicated; and the criteria used in order routing decisions should be identified"); IAA Letter, *supra* note 41, at 3–4 (noting the format and the presentation of information in 606 reports make the information difficult to analyze); Liquidnet Letter, *supra* note 41, Annex F, at F–1 to F–3 (suggesting the Commission consider modifying Rule 606 reports to "include data on execution quality for orders received and handled by the routing broker, in particular, data regarding execution time and price improvement"); Kaufman Letter, *supra* note 79, at 6 (suggesting generally that "brokers should be required to provide detailed descriptions of their order-routing procedures, including information on payments and rebates received"); TM Memo re Morgan Stanley III, *supra* note 79 (including a proposed venue analysis template with enumerated, specific disclosures to be reported).

[83] *See, e.g.*, ICI Letter, *supra* note 41, at 8–9 (stating that broker-dealers should be required to disclose policies and procedures to control leakage of information regarding a customer's order and other confidential information and policies and procedures regarding the dissemination of information about a customer's order and trade information to facilitate a trade, including the use of indications of interest); Liquidnet Letter, *supra* note 41, at 2 (stating that if institutional investors are appropriately informed as to how broker-dealers route their orders, they will make the best decisions as to how their large orders should be handled).

[84] *See* BlackRock Letter, *supra* note 41, at 3 (stating that revised Rule 605/606 disclosures should provide greater transparency on, among other things, marketable and non-marketable limit orders and order fill rates); KOR Trading Letter I, *supra* note 41, at 5 (proposing a list of updates to Rule 606 including requiring disclosure of statistics on marketable limit orders and greater transparency around broker-dealer internal order routing practices and decisions); TD Ameritrade Letter, *supra* note 19, at 6–7 (proposing to change the order classification in Rule 606 disclosures to include, among other things "Marketable Limit").

[85] *See* Associations Letter, *supra* note 5 (calling for customer-specific order routing disclosures for institutional investors); SIFMA Letter II, *supra* note 79, at 13 (stating that the Commission should require broker-dealers to provide standardized reports to institutional clients); KOR Trading Letter II, *supra* note 41, at 1 (stating that the public would be well served by "expanding Rule 606 to cover all orders and mandating uniform disclosure"); BlackRock Letter, *supra* note 41, at 3 (stating that "[b]roker-dealers should be required to provide periodic standardized reports on order routing and execution metrics to retail and institutional investors"); NYSE Euronext Letter, *supra* note 41, at 12 (noting that "Rule 606 reports do not capture information concerning large block transactions"); ICI Letter, *supra* note 41, at 10 (noting that Rule 606 was drafted primarily with the interests of individual investors in mind and large-sized orders are excluded from the rule); T. Rowe Price Letter, *supra* note 41, at 3 (opining that Rule 606 reports are "rarely used by institutional investors"); IAA Letter, *supra* note 41, at 4 (stating that the "exclusion of large orders in these [Rule 606] reports limits the value of these reports to institutional investors"); Liquidnet Letter, *supra* note 41, at 2 (stating that "[i]nstitutional and retail investors do not have sufficient information regarding how their orders are handled" and suggesting Rule 606 be modified to "[m]andate disclosure of specific order routing practices by institutional brokers"); TM Memo re Morgan Stanley III, *supra* note 79 (suggesting that broker-dealers should be required to "[p]rovide institutional clients with mandated transparency around order handling practices in today's environment" including an "objective and meaningful standardized venue analysis template").

[86] *See* TD Ameritrade Letter, *supra* note 19, at 6 (stating that the order classification status should be changed to include IOIs); ICI Letter, *supra* note 41, at 8 (suggesting the Commission consider requiring disclosure of policies and procedures regarding the dissemination of information about a customer's order and trade information to facilitate a trade, including the use of "indications of interest" or "IOIs"); KOR Trading Letter II, *supra* note 41, at 1 (stating Rule 606 should be expanded to include information on IOIs on dark pools).

[87] *See infra* Section III.A.10.

indication of interest'' (''actionable IOI'').[88] In 2009, the Commission proposed rules to regulate non-public trading interest,[89] which described characteristics of actionable IOI.[90] The Commission received a number of comment letters that addressed the characteristics.[91] Most of these commenters either noted in some form that the proposal did not expressly define ''actionable IOI'' or criticized the guidance.[92] A few of these commenters offered their own definitions or understanding of an actionable IOI.[93]

The Commission has considered these comments discussed in this Section II.F., and, for the reasons set forth throughout this release, is proposing the amendments to Rules 600, 605, 606, and 607 as described herein. Moreover, as noted earlier, the Commission is proposing amendments to other rules to update cross-references as a result of this proposal.[94]

III. Proposed Amendments to Rule 600, Rule 605, Rule 606, and Rule 607

A. Disclosures for Institutional Orders

The Commission proposes to amend Rule 606 to require a broker-dealer that receives institutional orders in NMS stocks to, upon request, provide customer-specific reports regarding the venues to which the institutional orders are either routed or exposed through an actionable IOI.[95] Such disclosures would provide a broad range of statistical data regarding the broker-dealer's handling of institutional orders, including order routing and execution information for those orders at each trading center in the aggregate and by order routing strategy. The disclosure of such information would provide customers with standardized information about institutional order routing and order execution quality and serve as a baseline for further analysis and comparison of broker-dealers. In addition, the disclosures would assist customers in reviewing order routing practices, assessing execution quality, managing potential conflicts of interest, and handling information leakage. The Commission preliminarily believes that increased, uniform transparency should assist customers in determining the quality of their broker-dealer's services.

1. Definition of Institutional Order in Proposed Rule 600(b)(31)

Currently, Rule 606 of Regulation NMS limits the required public disclosure of a broker-dealer's order routing information to non-directed orders in NMS securities that are in amounts less than (i) $200,000 for NMS stocks, and (ii) $50,000 for option contracts.[96] In proposing Rule 606, the Commission discussed the thresholds in connection with its proposed definition of ''customer order''[97] and noted that ''[l]arge orders are excluded in recognition of the fact that statistics for where orders are routed and general descriptions of order routing practices are more useful for smaller orders that tend to be homogenous.''[98] Thus, while customers and market participants have access to publicly-available order execution quality statistics and order routing information for small orders pursuant to Rule 605 and 606 of Regulation NMS,[99] institutional customers have observed that there is a lack of corresponding information for larger orders.

To facilitate enhanced transparency around the handling of larger orders in NMS stocks, the Commission is proposing to amend Rule 600 to include a definition of ''institutional order.''[100] Specifically, under proposed Rule 600(b)(31) of Regulation NMS, an institutional order would be defined as an order to buy or sell a quantity of an NMS stock having a market value of at least $200,000, provided that such order is not for the account of a broker-dealer.[101]

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[88] *See* proposed Rule 600(b)(1).

[89] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66, at 61219. Among other things, the Commission proposed to amend the Exchange Act quoting requirements to apply expressly to actionable IOIs. *See id.*, at 61211.

[90] ''[A]n IOI would be actionable if it effectively alerted the recipient that the dark pool currently has trading interest in a particular symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (equal to or better than the national best bid for buying interest and the national best offer for selling interest).'' *Id.*, at 61226.

[91] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Senior Vice President—Legal & Corporate Secretary Office of the General Counsel, NYSE Euronext, dated February 22, 2010 (''NYSE Euronext IOI Letter''); from John A. McCarthy, General Counsel, GETCO, LLC, dated February 22, 2010 (''GETCO Letter''); from P. Mats Goebels, Managing Director and General Counsel, Investment Technology Group, Inc., dated February 22, 2010 (''ITG Letter''); from Vivian A. Maese, Esq., General Counsel and Corporate Secretary, BIDS Trading, LP, New York, New York, dated February 18, 2010 (''BIDS Trading Letter''); from Greg Tusar, Managing Director, Goldman Sachs Execution & Clearing, L.P. and Matthew Lavicka, Managing Director, Goldman Sachs & Co., dated February 17, 2010 (''Goldman Sachs Letter''); from Kimberly Unger, Esq., Executive Director, Security Traders Association of New York, Inc., New York, New York, dated February 17, 2010 (''STA IOI Letter''); from Patrick D. Armstrong, Co-President, Alliance of Floor Brokers, New York, New York, dated January 29, 2010 (''AFB Letter''); from Matthew K. Samelson, Principal, Woodbine Associates, Stamford, Connecticut, dated October 23, 2009 (''Woodbine Letter'').

[92] *See* NYSE Euronext IOI Letter, *supra* note 91, at 4 (stating that the Commission should provide clear guidance as to what constitutes an actionable IOI, perhaps in the form of a non-exclusive list of examples); ITG Letter, *supra* note 91, at 3 (stating that that the Commission should provide a more precise and predictable definition of ''actionable IOI''); BIDS Trading Letter, *supra* note 91, at 2 (noting the uncertainty regarding the definition of an ''actionable'' IOI); Goldman Sachs Letter, *supra* note 91, at 2 (expressing concern that an explicit definition of actionable IOIs will not be sufficiently broad to encompass the evolving range of messaging and communications that might satisfy the definition of an actionable IOI); STA IOI Letter, *supra* note 91, at 2 (stating that the proposed guidance appears to deem an IOI actionable with specific mention of price, size, or side, and that such a definition is too broad); AFB Letter, *supra* note 91, at 2 (noting that the Commission's proposal does not specifically define ''actionable IOI''); Woodbine Letter, *supra* note 91, at 2–3 (stating that the Commission's guidance on what constitutes an ''actionable IOI'' is not clear).

[93] *See* GETCO Letter, *supra* note 91, at 3 (actionable IOIs explicitly or implicitly convey information that there is actionable trading interest in a symbol); AFB Letter, *supra* note 91, at 2 (an actionable IOI is a bid or offer that can be accessed by one set of market participants that is not publicly disseminated).

[94] The Commission is proposing to amend Rule 3a51–1(a) under the Exchange Act; Rule 13h–1(a)(5) of Regulation 13D–G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), 607(a)(1), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI.

[95] *See* proposed Rule 606(b)(3).

[96] *See* 17 CFR 242.606. *See also supra* note 7 and accompanying text.

[97] *See supra* note 7 and accompanying text.

[98] *See* Rule 606 Predecessor Proposing Release, *supra* note 15, at 48417. The Commission cited the heterogeneity of larger orders, and the difficulty in effectively reducing that heterogeneous universe into summary statistics, as the primary reason for excluding those orders from the coverage of the Rule. *See supra* notes 21 and 22 and accompanying text. Today, institutional orders are still not homogenous; however the manner in which they are handled has become increasingly systematized, thus making it more practical to categorize them. The Commission preliminarily believes that the current market structure and advances in routing and execution technology, which automatically and electronically record order routing information, have made statistics for where institutional orders are routed more useful and disclosure of such statistics more practicable.

[99] 17 CFR 242.605–606.

[100] *See* proposed Rule 600(b)(31).

[101] As proposed, the definition of institutional order would only apply to orders for NMS stocks, and, therefore, would not include orders in NMS securities that are options contracts. Due to differences in the current market structure for NMS securities that are options contracts, in particular the lack of an over-the-counter market in listed options, the Commission preliminarily believes that the same market structure complexities do not exist at this time to warrant the institutional order handling disclosures proposed herein. *See* Securities Exchange Act Release No. 61902 (April 14, 2010), 75 FR 20738, 20740 (April 20, 2010) (stating that all orders in the listed options market are currently executed on registered national securities exchanges). Specifically, since listed options are limited to trading on the 14 registered options exchanges, the number of venues to which listed options could be routed and executed is significantly less than the over 253 venues for NMS stocks. *See supra* notes 31–32 and accompanying text. In addition, the broker-dealer ownership and affiliation concerns with over-the-counter venues do not exist in the listed options market. The Commission preliminarily believes that at this time

The proposed definition of "institutional order" is intended to complement the current definition of "customer order."[102] The proposed dollar threshold for an institutional order would dovetail with the definition of "customer order" such that all orders in NMS stocks routed by broker-dealers for their customers, whether retail- or institutional-sized, would be encompassed by order routing disclosure rules.[103] As noted above, institutional orders are generally divided into smaller orders and routed to various trading centers. The Commission notes that, as discussed below, the proposed institutional order handling reports would include the routing of all smaller orders derived from institutional orders.

The Commission preliminarily believes that defining institutional order in relation to the dollar amount of the order is an appropriate means to differentiate between small orders that are typically characterized as orders of $200,000 or less and larger-sized orders that are generally categorized as orders of $200,000 or more.[104] Since "customer order" is currently defined using $200,000 as an upper threshold, the Commission preliminarily believes that market participants are accustomed to considering an order of $200,000 or more as an institutional order rather than a customer order. In addition, the Commission preliminarily believes that rather than proposing a new monetary value to define large-sized orders generally placed by institutional customers, administration would be more straightforward for broker-dealers using a defined standard that is commonly recognized in the industry. Therefore, the Commission preliminarily believes that the $200,000 threshold continues to be a reasonable threshold to accommodate such distinction between small orders and large orders, which are generally handled in a different manner by broker-dealers.[105]

The Commission requests comment on the expansion of Rule 606 to include institutional orders and the definition of "institutional order" in proposed Rule 600(b)(31). In particular, the Commission solicits comment on the following:

1. Do commenters believe Rule 606 should be expanded to include institutional orders? Why or why not? Should the Commission consider an alternative approach? Why or why not?

2. Do commenters believe it is useful or necessary to define an institutional order? Do commenters believe that the proposed definition of institutional order should include securities other than NMS stocks? For example, should NMS securities that are options contracts be included? Why or why not? Should non-NMS securities, such as securities traded only in the OTC market, be included? Why or why not? Would including these types of securities in the definition of institutional order be useful to institutional customers? If so, how? Please explain and provide support for your view.

3. Do commenters believe that dollar value is the proper criterion for defining an institutional order? If so, is $200,000 the appropriate amount? Why or why not? If not, should it be higher or lower? If so, what amount? Are there other order characteristics the Commission should consider to distinguish between retail and institutional orders, in addition to, or instead of, a dollar threshold? Should the criteria be different for different types of stocks? For example, would $200,000 capture large-sized orders for liquid or illiquid stocks, high-priced or low-priced stocks, large capitalization or small capitalization stocks? Please explain and provide data to support your argument.

4. Should the Commission define an institutional order based on the number of shares instead of a market value? Why or why not? For example, would 10,000 shares be an appropriate criterion for defining an institutional order, regardless of dollar value? Should it be more or less? Please explain and provide data.

5. Should the Commission require broker-dealers to make the disclosures proposed in Rule 606(b)–(c) for all orders, irrespective of dollar amount? Why or why not? Please explain.

6. Should the definition of institutional order reflect a different threshold, such as order size or market value, for various types of NMS stocks, such as common stock and exchange-traded products? If so, what thresholds are appropriate and for which NMS stocks? If possible, please provide data and analysis to support your view.

7. Should the definition of institutional order incorporate multiple metrics, such as a certain market value of the order plus a certain number of shares for the order? If possible, please provide data and analysis to support your view.

8. Do commenters believe that customers should be able to designate which orders qualify as an institutional order? For example, should a customer be able to designate smaller orders sent to a broker-dealer as an institutional order? If so, how would that be done? Should institutional order be defined as a combination of customers designating institutional orders and a threshold, *i.e.*, if either requirement is satisfied, it would then be defined as an institutional order? Please provide support for your arguments.

9. Do commenters have alternative definitions for an institutional order, or modifications to the proposed definition? Please explain and provide supporting data, if possible.

10. Instead of defining institutional order, do commenters believe that there are alternative approaches that the Commission should consider in structuring order handling disclosures for large orders? If so, please explain the approach in detail, including the benefits and costs of the approach.

2. Definition of Actionable Indication of Interest in Proposed Rule 600(b)(1)

To further facilitate the institutional order disclosure regime, the Commission proposes to amend Rule 600 to include a definition of "actionable indication of interest."[106] As the Commission indicated in 2009, an actionable IOI is a privately transmitted message by certain trading centers, such as an ATS or an internalizing broker-dealer, to selected market participants to attract immediately executable order flow to such trading centers, and functions in some respects similarly to a displayed order or a quotation.[107] As such, actionable IOIs can be used by: (1) A trading center to generate trading volume, which in turn could prompt market participants to send more orders to such venue; (2) market participants that submit orders to a trading center to receive executions through the use of actionable IOIs to attract contra side liquidity; and (3) a trading center to

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the current listed options market structure does not present the same concerns regarding fiduciary responsibilities, information leakage, and conflicts of interest as the market structure for NMS stocks.

[102] *See infra* Section III.A.1.

[103] *See id.* The Commission notes that the proposed definition of "institutional order" was referred to as "large orders" in the Rule 606 Predecessor Proposing Release and Rule 606 Predecessor Adopting Release. *See supra* note 15.

[104] *See, e.g.,* 17 CFR 242.606 (defining block size with respect to an order to include an order for a quantity of stock having a market value of at least $200,000).

[105] As detailed below, the Commission is proposing new disclosures in Rule 606 that would apply to institutional orders.

[106] *See* proposed Rule 600(b)(1).

[107] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66, at 61210 (describing actionable IOIs as privately transmitted messages to selected market participants intended to "attract immediately executable order flow" and comparing their function to "displayed quotations").

generate transaction fees from the executions.

Under proposed Rule 600(b)(1) of Regulation NMS, an actionable IOI would be defined as "any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot." [108] The Commission preliminarily believes that for an IOI to be actionable it must contain information sufficient to attract immediately executable orders to the venue sending the indication of interest. The Commission preliminarily believes that the four elements contained in the proposed definition of actionable IOI (symbol, side, price, and size) are all necessary pieces of information for an external liquidity provider to respond with an order to execute against the order at the venue sending the indication of interest. Indeed, if one of the four elements is not explicitly or implicitly conveyed, an external liquidity provider would not have sufficient information to decide whether to respond to the IOI or to ensure the order it sends in response to the IOI would be immediately executable.[109] Without the symbol, an external liquidity provider would not know the security for which to send an order. Without the side, an external liquidity provider would not know whether to send a buy order or a sell order. Without the price, an external liquidity provider would not know where to price its order to ensure the order is immediately executable. Without the size, an external liquidity provider would not know the number of shares it could expect to receive from responding to the IOI.

A determination of whether an IOI implicitly conveys information—and thus contains each of the four elements to make such IOI actionable—involves a consideration of all of the facts and circumstances, including the course of dealing between the IOI sender and the recipient. For example, a message that alerts the recipient that there is trading interest in a particular symbol and side at the venue sending the IOI generally would be considered "actionable" even though it does not explicitly specify the price and size if, through the course of dealings, the recipient could expect to respond and receive an execution equal to or better than the applicable national best bid or offer for at least one round lot. The Commission notes that the proposed definition is substantively similar to the Commission's description of actionable IOIs in the Regulation of Non-Public Trading Release in 2009.[110]

When used in the context of the proposed institutional order handling report, the proposed definition of actionable IOI would require a broker-dealer to disclose its activity that communicates to external liquidity providers to send an order to the broker-dealer in response to a customer's institutional order. The Commission preliminarily believes information about a broker-dealer's use of actionable IOIs in executing institutional orders will be useful to customers assessing the broker-dealer's order handling decisions, particularly in regards to analyzing information leakage because, when "actionable IOIs are intended to attract immediately executable order flow to the trading venue," [111] actionable IOIs "function quite similarly to displayed quotations" [112] and thus have the capacity to communicate information about the existence of an institutional order. In addition, as discussed in greater detail above,[113] the Commission notes that certain commenters on the Concept Release on Equity Market Structure specifically requested that Rule 606 be expanded to require the disclosure of information related to the use of actionable IOIs.[114] The Commission also notes that some commenters on the Regulation of Non-Public Trading Interest Release raised concerns about the Commission's description of an actionable IOI, including whether the description of an actionable IOI could be clearer and more precise.[115] A few commenters also differed on whether the Commission's description of an actionable IOI was too broad or not broad enough to encompass all intended messaging activity that could result in an execution.[116] The Commission has considered these comments. The Commission preliminarily believes on balance that, in the context of the reporting regime proposed in this release, it remains appropriate to look to the description of actionable IOI contained in the Regulation of Non-Public Trading Interest Release and preliminarily believes that description would capture the necessary information to make an IOI actionable and therefore the functional equivalent of an order. Accordingly, the Commission is using the description of an actionable IOI contained in the Regulation of Non-Public Trading Interest Release as the basis for the proposed definition of actionable IOI in Rule 600(b)(1) of Regulation NMS. In addition, for the reasons stated below, the Commission preliminarily believes that the proposed definition of actionable IOI captures the types of activity that would be pertinent for customers in evaluating how a broker-dealer handles its institutional orders.

One purpose of the proposed amendments to Rule 606 is to reflect how large orders are handled and how information is shared and dispersed among the marketplace. The Commission has previously noted that because actionable IOIs convey similar information as an order, a response to an actionable IOI may result in an execution at the venue of the IOI sender.[117] As such, the Commission preliminarily believes that actionable IOIs, as proposed to be defined, function quite similarly to an order or a displayed quotation.[118] Given this similarity, the Commission preliminarily believes that a rule that did not capture information related to the use of actionable IOIs in this manner would leave customers without information that could help them have a more complete understanding of how broker-dealers handle their institutional orders. If an IOI contains, explicitly or implicitly, the four criteria of the proposed definition of actionable IOI, then it is the functional equivalent to an order or a quotation. Because of this, the Commission preliminarily believes that the proposed definition of actionable IOI will capture information that could be used by customers to better understand how broker-dealers handle their institutional orders, particularly in regards to information leakage, and will be important to customers in evaluating the order handling and execution practices of their broker-dealers.

Separately, the Commission notes that as a result of the Commission proposing both the definitions of institutional order and actionable indications of interest, the Commission is also proposing to renumber the existing definitions in Rule 600(b) accordingly, and update other rules to change cross-references.

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[108] *See* proposed Rule 600(b)(1).

[109] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66, at 61210–11 (discussing the four elements of an actionable IOI and the inferences a trader can make to reasonably conclude that the order it sends in response to the indication of interest will result in an execution).

[110] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66. *See also supra* Section II.F.5. discussing comments received and discussion relating to actionable IOI.

[111] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66, at 61210.

[112] *Id.*

[113] *See supra* Section II.F.5.

[114] *See supra* note 92.

[115] *See id.*

[116] *See id.*

[117] *See* Regulation of Non-Public Trading Interest Proposing Release, *supra* note 66, at 61210–11.

[118] *See id.*

The Commission requests comment on the proposed definition of "actionable indication of interest," as well as the other proposed changes to Rule 600(b) noted above. In particular, the Commission solicits comment on the following:

11. Do commenters believe that a symbol is a necessary element to include in the definition of actionable IOI? Is the side (buy or sell) a necessary element to include in the definition of actionable IOI? Should price be an element in the definition of actionable IOI or is it assumed that it would be equal to or better than the applicable national best bid or offer? Is size a necessary element to define an actionable IOI? Should an actionable IOI be defined to require only a subset of these elements, or should any of the proposed elements be modified? If so, which elements and why? Are there alternative definitions that would capture the activity of a broker-dealer communicating to external liquidity providers that should be included as part of the required disclosure? Are there other elements or factors that the Commission should consider in the definition of actionable IOI? Should any of the proposed elements be omitted? Why or why not?

12. Do commenters believe that an IOI can be "actionable" even if a subset of the elements (symbol, side, price, and size) is conveyed implicitly? Should broker-dealers be required to disclose information about actionable IOIs where one, some, or all of the elements are conveyed implicitly? Why or why not? Would broker-dealers be able to program automated systems to identify as actionable IOIs instances in which information is being conveyed implicitly, such as through a course of dealing between a liquidity provider and the broker-dealer?

13. Do commenters believe there are other types of indications of interest that should be required to be disclosed? If so, what types and how would they be defined?

14. Do commenters believe actionable IOIs are linked to specific orders at the broker-dealer, such that when the external liquidity provider responds to an actionable IOI with a contra-side order, the broker-dealer will be able to match both sides of the trade?

15. Do commenters believe that there are alternative approaches to defining an actionable IOI? If so, please explain each approach in detail, including the benefits and costs of the approach.

3. Scope and Format of Reports

The Commission understands that customers increasingly are requesting institutional order handling information to better understand and assess order routing strategies, best execution, potential conflicts of interest, and the risk of information leakage. The Commission understands that many broker-dealers currently respond to such requests by providing reports on their institutional order handling to customers. However, the Commission understands that these reports often contain non-standardized terms, and often are not presented in a uniform manner to allow for effective comparison across different broker-dealers and trading centers.[119]

The Commission preliminarily believes that requiring broker-dealers to disclose standardized customer-specific institutional order handling information to their customers would facilitate the ability for such customers to assess broker-dealers' order handling practices and how such practices affect best execution, potential conflicts of interest, the potential for information leakage, and execution quality generally. The proposed disclosures described below effectively would set a baseline for disclosure of customer-specific institutional order handling information that all customers, regardless of size, could receive from their broker-dealers upon request. The Commission preliminarily believes that the proposed disclosures would provide needed transparency into broker-dealer institutional order handling practices, and would promote discussions between broker-dealers and customers regarding the broker-dealer's institutional order handling practices and the effect such practices have on execution quality. In addition, the Commission preliminarily believes that the proposed disclosures would allow customers to better compare institutional order handling practices across multiple broker-dealers, which should provide a basis for more informed decision making when customers engage the order routing services of broker-dealers.

Specifically, the Commission is proposing to amend Rule 606(b) of Regulation NMS to require that a broker-dealer, on request of a customer that places, directly or indirectly, an institutional order with it, disclose to such customer within seven business days of receiving the request, a report on its handling of institutional orders for that customer that contains information for the prior six months, broken down by calendar month.[120] The Commission preliminarily believes that requiring broker-dealers to provide the customer-specific reports within seven business days will ensure that all institutional customers, regardless of size, receive their order handling information in a timeframe that would allow them to act in a timely fashion in response to the information contained in the report. The Commission also preliminarily believes that broker-dealers will develop technical processes to produce these reports in an automated manner,[121] and as such, requiring a response to an individual customer request within seven business days would not be unduly burdensome and should provide a sufficient amount of time for broker-dealers to generate the required disclosure and respond to customer requests. Separately, the Commission notes that the proposed requirement to provide customer-specific institutional order handling information for the prior six months is consistent with the reporting period currently required for customer-specific reports on retail order routing.[122] The Commission preliminarily believes that a six-month reporting period is also appropriate for institutional orders, as it would provide individual customers with the most recent months of institutional order handling data and would cover the full period contained in the broker-dealer's last public aggregated institutional order handling report.[123]

The proposed report would cover instances where an institutional order is handled either directly by the broker-dealer or indirectly through systems provided by the broker-dealer. For example, an institutional order would have been placed with a broker-dealer if a broker-dealer receives an institutional order directly from a customer and works to execute the order itself, as well as if a broker-dealer receives an institutional order indirectly from a customer, where the customer self-directs its institutional order by entering it into a routing system or execution algorithm provided by the broker-dealer.

The Commission notes that the proposal would require a broker-dealer to provide a report "on request of a customer that places, directly or indirectly, an institutional order with the broker or dealer . . . ."[124] Accordingly, a broker-dealer must provide a report under the proposed rule to the customer placing the order with the broker-dealer, who may be acting on behalf of others and thus not be the ultimate beneficiary of any resulting transactions.[125] The Commission preliminarily believes that requiring the reports to be provided to the customer that places an institutional order with the broker-dealer is appropriate because it would require the broker-dealer to provide the report to the person that is responsible for making the routing and execution decisions for such institutional order. For example, if an investment adviser, as the customer of a broker-dealer, places institutional orders with a broker-dealer that represents trading interest from multiple underlying clients of the investment adviser, the investment adviser, as the customer of the broker-dealer, would be the sole entity to whom the broker-dealer is required to provide a report under the proposed rule; and not the multiple underlying clients of the investment adviser.

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[119] *See* Associations Letter, *supra* note 5, at 2.

[120] *See* proposed Rule 606(b)(3).

[121] *See infra* Section IV.A.1.

[122] *See* Rule 606(b)(1).

[123] *See* proposed Rule 606(c). *See also* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75430 n.81 (discussing the six-month reporting period for reports on customer-specific retail order routing).

Separately, the Commission notes that while the proposed rule would allow a customer that places, directly or indirectly, an institutional order with a broker-dealer to request and receive its institutional order handling report, it would not limit the number of times a customer could place a request. The proposed rule also would not preclude a customer from making a standing request to its broker-dealer, whereby the customer would automatically receive a recurring report on an periodic basis without the need to make repeated requests for its institutional order handling reports. However, the Commission does not intend for the proposed rule to duplicate information the broker-dealer has previously provided the customer pursuant to a prior request under the proposed rule. For example, if a broker-dealer provides a report to a customer for the prior six months, and that customer requests an additional report the following month, the broker-dealer would only need to provide a report for the latest month. In addition, the Commission acknowledges that broker-dealers may need to configure their systems to capture the information necessary to produce the proposed institutional order handling reports and, therefore, may not have the ability to produce historical reports about the routing of orders and executions that occurred before such systems are updated. Accordingly, the Commission would not require broker-dealers to produce institutional handling reports containing information to cover months before broker-dealers are required to comply with such rule, if adopted.

For purposes of the report, the handling of an institutional order would include the handling of all smaller orders derived from the institutional orders.[126] As noted above, institutional orders are generally divided into smaller orders and routed to various trading centers. For the disclosure to be meaningful and complete, the Commission preliminarily believes that the routing of each child order derived from an institutional parent order should be required to be included in the report. The Commission understands that current technologies employed by broker-dealers typically are able to track child orders and link such child orders back to the parent order,[127] thus minimizing burdens associated with this component of the proposed rule.

The Commission is further proposing to require that the report be made available using an eXtensible Markup Language (XML) schema and associated PDF renderer to be published on the Commission's Web site.[128] Requiring the report to be provided in XML should result in the data in the report being provided in a consistent, structured format. XML is an open standard[129] that defines, or "tags," data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be automatically recognized and processed by a variety of software applications such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end-user to search, aggregate, compare, and analyze. In addition, the XML schema could be easily updated to reflect any changes to the open standard. The Commission preliminarily believes that requiring the report be provided in in an XML format would provide the customers and the public (in the case of public reports) with data about order handling practices in a format that would facilitate search capabilities, and statistical and comparative analyses across broker-dealers and date ranges. Absent this requirement, any customers or members of the public seeking to use the information would need either to spend time manually collecting the data and manually entering the data into a format that allows for analysis, thus increasing the time needed to analyze the data, or incur the cost of subscribing to a financial service provider that specializes in this data aggregation and comparison process. Further, manual entering of data may lead to errors, thereby potentially reducing data quality and usability. By proposing to require the use of an XML format so that the information would be more readily available, customers might be able to better use the information to compare execution quality of broker-dealers, thereby allowing them to select broker-dealers that are a better match to their preferences. The Commission is also proposing that the report be provided in PDF format using the associated PDF renderer published on the Commission's Web site so that the report would also be provided in a human-readable format for those customers who prefer only to review individual reports and not necessarily aggregate or conduct large-scale analysis on the data. Like XML, PDF is also an open standard. By using the associated PDF renderer published on the Commission's Web site, the XML data will be instantly presentable in a PDF format and consistently presented across filings.

The Commission seeks comment generally on the report format proposed in Rule 606(b)(3). In particular, the Commission solicits comment on the following:

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[124] *See id.*

[125] The Commission notes that "customer" is broadly defined as "any person that is not a broker or dealer" in Rule 600(b)(16). However, for the purposes of the proposed amendments to Rule 606, which are to provide detailed information about order routing and execution quality to the person responsible for assuring the effectiveness of this function, the Commission preliminarily believes that it is appropriate to view the customer placing the order with the broker-dealer, whether the account holder or an investment adviser or other fiduciary, as the "customer."

[126] *See* proposed Rule 606(b)(3). The Commission notes that an order would only be required to be included in the proposed report if it met the definition, and thus the size threshold, of an institutional order when received by the broker-dealer.

[127] Broker-dealers have developed their own systems allowing for tracking and linking of child orders to parent orders. Third-party software enables this, as well. *See, e.g., Advanced Orders Panel*, Interactive Brokers, *available at https://www.interactivebrokers.com/en/software/tws/usersguidebook/mosaic/advanced_orders_panel.htm*; *Viewing Child Orders*, Trading Technologies, *available at https://www.tradingtechnologies.com/help/xtrader/viewing-child-orders/*; *Smart Order Routing*, StreamBase, *available at http://www.streambase.com/industries/capitalmarkets/smart-order-routing/*.

[128] *See* proposed Rule 606(b)(3). The Commission's schema is a set of custom XML tags and XML restrictions designed by the Commission to reflect the proposed disclosures in Rule 606.

[129] The term "open standard" is generally applied to technological specifications that are widely available to the public, royalty-free, at no cost.

16. Do commenters believe the proposed scope of the institutional order handling report is practicable and appropriate? Why or why not? Please explain and provide data, if possible.

17. Do commenters believe that it is appropriate to view the customer placing the order with the broker-dealer, whether the account holder or an investment adviser or other fiduciary, as the "customer" for purposes of the proposed amendments to Rule 606? Should entities other than the customer placing the order with the broker-dealer be entitled to receive the report? For example, if an investment adviser represents multiple underlying clients, should each underlying client be entitled to receive the report? Please explain.

18. Do commenters believe that broker-dealers should be required to provide the customer-specific report on institutional order handling in the proposed format? Why or why not? Do commenters believe broker-dealers should be required to provide the report in a structured XML format? Would such a format facilitate comparison of the data across broker-dealers? If not, why not? Do commenters believe broker-dealers should be required to also provide the report in an instantly readable PDF format? If not, why not? Are there other formats or alternative methods to provide the customer-specific reports that the Commission should consider? If so, please explain and provide data.

19. Do commenters believe that seven business days is a reasonable amount of time for a broker-dealer to respond to a customer request for institutional order handling information? If not, what would be a reasonable amount of time?

20. The Commission notes that Rule 606(b)(2) requires that broker-dealers notify their customers annually, in writing, of the availability of a report on the routing of retail orders. Should the Commission include a similar requirement for a report on the handling of institutional orders?

21. Do commenters believe that the rule should include a de minimis exemption for broker-dealers that receive, in the aggregate, less than a certain threshold number or dollar value of institutional orders? Why or why not? If so, what would be the appropriate threshold number or dollar value of institutional orders a broker-dealer should need to receive from all customers in the aggregate before it would be required to provide customer-specific order handling disclosures to any customer? Please explain and provide data, if possible.

22. Do commenters believe that the rule should be applicable, with respect to disclosures to any particular customer, only if a broker-dealer receives greater than a certain threshold number or dollar value of institutional orders from that customer? Why or why not? What would be the appropriate threshold number or dollar value of institutional orders from a particular customer before a broker-dealer should be required to provide customer-specific order handling disclosures to the particular customer? Please explain and provide data, if possible.

23. Do commenters believe that the required disclosure regarding the handling of an institutional order should include the handling of all smaller (child) orders derived from the institutional order? Why or why not?

24. Do commenters believe that the rule should cover institutional orders placed both directly and indirectly with a broker-dealer? Should the rule only cover orders placed directly with a broker-dealer? Why or why not?

25. Do commenters believe that the rule should specify the number of times a broker-dealer is required by the rule to respond to a customer request for a report on the handling of its institutional orders? Why or why not? If yes, what should the number of times be? Alternatively, do commenters believe that broker-dealers should be required to provide customers with institutional orders ongoing access to order handling reports through a secure portal on their Web sites? Why or why not? How would this impact broker-dealers' compliance costs, or the accessibility to customers of order handling reports? Please explain.

26. As noted above, the proposed rule would not preclude customers from making standing requests for their broker-dealers to provide them order handling reports on a specified regular basis. Do commenters believe broker-dealers should be required to automatically provide reports to customers with respect to their institutional orders, without the customer making a specific request? If so, how frequently should this information be provided (*e.g.*, every month, three months, six months, annually)? Please explain. To what extent would automatically providing reports facilitate the dissemination of order handling information to customers that might not otherwise take the time to request it? On the other hand, to what extent would automatically providing reports require order handling information to be provided to customers that they might not want or use? If order handling reports are required to be automatically provided, should customers be permitted to opt out from receiving certain information or reports in their entirety? Should a requirement to automatically provide reports exclude customers with only a de minimis number of institutional orders? If so, what would be an appropriate de minimis level? How would a requirement to automatically provide customers with reports rather than provide them upon request change the costs for broker-dealers? Considering that broker-dealers that handle institutional orders would need to be prepared to provide reports to customers on request, and therefore would need to develop the technology to produce such reports in an automated manner, what would be the incremental costs for them to run the reports for all customers on a periodic basis? Would there be any benefits from broker-dealers running the reports for all customers on a periodic basis? Would the broker-dealer experience lower costs from manually providing the reports solely upon request? Would other costs be involved? Please explain and provide data.

As noted above, the Commission is proposing to require that the institutional order handling reports be broken down by calendar month.[130] The Commission understands that trading centers frequently change their fee structures, including the amount of fees and rebates, to attract order flow, and such changes typically occur at the beginning of a calendar month. The Commission preliminarily believes these changes in fee structures at trading centers may affect a broker-dealer's routing decisions. The Commission therefore preliminarily believes that if customer-specific reports on institutional order handling reflected data over a longer period of time, the aggregated information contained in the reports may not be as illustrative or as useful in informing customers as to how fee structures potentially affected the broker-dealer's routing behavior.

For example, if a change in a trading center's pricing structure occurs at the beginning of a calendar month, and the report on a customer's institutional order handling reflected aggregated data for the past six months, then any change in broker-dealer routing behavior as a result of the change in trading center pricing would be harder to detect as the change in data would be diluted and averaged over a period of months. The Commission preliminarily believes that by requiring the reports to be broken down by calendar month would enable customers to better assess a broker-dealer's institutional order handling practices and any changes in routing behavior in response to internal or external factors. In addition, for those with a fiduciary responsibility to monitor for best execution, monthly detail would help facilitate regular and more precise review to evaluate whether their selected broker-dealers are providing satisfactory execution quality.

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[130] *See id.*

As proposed, Rule 606(b)(3) requires that the broker-dealer's report reflect aggregated information regarding the handling of a customer's institutional orders for the prior six months, broken down by calendar month. Additionally, the Commission preliminarily believes that, if a customer places an institutional order that identifies the particular account for which the order was submitted, the broker-dealer would be well-positioned to provide the customer, upon request, a report broken down by account. The Commission preliminarily believes that, because the proposed disclosures will aggregate information to be disclosed to a specific customer across all of the customer's institutional orders, the risk that such disclosures would reveal sensitive, proprietary information about broker-dealers' order handling techniques should be minimal. The Commission is cognizant of the concerns broker-dealers would have if such disclosures revealed proprietary order handling techniques, and preliminarily believes that aggregated customer-specific order handling information would not enable a customer to reverse-engineer proprietary order handling techniques.

The Commission requests comment on this proposed requirement. In particular, the Commission solicits comment on the following:

27. Is six months an appropriate timeframe for the reporting period for customer-specific order handling information? Would a longer or shorter time period (*e.g.*, quarterly) be more appropriate? How soon after month-end should the customer-specific order handling report be provided (*e.g.*, two-weeks after the end of the preceding month)? Please explain.

28. Do commenters believe that aggregated information, broken down by calendar month, is a useful format for the customer? Should the data be required to be provided in a more granular or broader manner? For example, would it be more useful for institutional customers to receive data about the handling of their institutional orders on a stock-by-stock basis rather than aggregated? Please provide support for your arguments and describe any costs and benefits associated with an alternative format.

29. Does aggregating of all of a customer's institutional orders into a single report adequately prevent sensitive, proprietary information from being revealed? If not, why not? Could aggregated institutional order disclosures allow a customer or competitors to reverse engineer a broker-dealer's order handling techniques?

30. As noted above, the Commission preliminarily believes that, if a customer places an institutional order that identifies the particular account for which the order was submitted, the broker-dealer would be well-positioned to provide the customer, upon request, a report broken down by account. Do commenters believe that the rule should require a broker-dealer to provide, upon request, a report broken down by account, if the customer identifies the particular account for which the order was submitted? Why or why not? Please discuss the benefits and costs with such an account-by-account approach.

Finally, to provide a standardized format for the proposed institutional order handling report, the Commission proposes that the disclosures regarding institutional orders a broker-dealer executes internally or routes to other venues be made in chart form with certain rows and columns of required information.[131] Specifically, the Commission proposes to require that each report contain rows that would be categorized by venue and by order routing strategy category, as described in more detail below, for each venue.[132] In addition, the Commission proposes to require that each report contain certain columns of information, as described below in more detail, for each of the required rows.[133] Thus, each report would be formatted so that a customer would be readily able to observe their order activity at a particular venue, as further subdivided by order routing strategy category for that venue.

The Commission preliminarily believes it is important for customers to understand the venues where their institutional orders are exposed and executed,[134] and that segmenting the institutional order handling report by venue would be useful for customers to understand where their institutional orders are routed and executed. As proposed, the report would present the order handling information in a manner that would allow customers to readily compare venues. For purposes of the institutional order handling report, a venue would be any trading center[135] to which an order is routed or where an order is executed.

The Commission also proposes to require that the institutional order handling report be categorized by order routing strategy category for institutional orders for each venue.[136] The Commission preliminarily believes that order routing strategies for institutional orders can be categorized into three general strategy categories: (1) A "passive order routing strategy," which emphasizes the minimization of price impact over the speed of execution of the entire institutional order; (2) a "neutral order routing strategy," which is relatively neutral between the minimization of price impact and speed of execution of the entire institutional order; and (3) an "aggressive order routing strategy," which emphasizes speed of execution of the entire institutional order over the minimization of price impact.[137] The Commission is not aware of any generally accepted definitions or metrics to define these order routing strategies, and the proposed rule does not further define these three order routing strategy categories. Rather, by providing a general description, the Commission would afford broker-dealers flexibility to determine how to group their various order routing strategies for institutional orders into the three categories for reporting purposes, according to the general description provided in the proposed rule. A broker-dealer would be required to assign each order routing strategy that it uses for institutional orders to one of the three categories in a consistent manner for each report it prepares pursuant to the proposed rule, and would be required to document the specific methodologies it relies upon for making such assignments.[138] The Commission is proposing to require every broker-dealer to preserve a copy of the methodologies used to assign its order routing strategies and maintain such copy as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange

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[131] *See supra* note 41. *See, e.g.*, SIFMA Letter II, *supra* note 79, at 13 (stating that the Commission should direct broker-dealers to provide institutional clients with standardized execution venue reports); BlackRock Letter, *supra* note 41, at 3 (stating broker-dealers should be required to provide periodic standardized reports on order routing and execution metrics to both retail and institutional investors).

[132] *See* proposed Rule 606(b)(3).

[133] *See* proposed Rule 606(b)(3)(i)–(iv).

[134] *See supra* note 65.

[135] *See supra* note 3.

[136] *See* proposed Rule 606(b)(3).

[137] *See* proposed Rule 606(b)(3)(v).

[138] *See id.*

Act.[139] Once a broker-dealer's strategies are assigned a category, the broker-dealer shall promptly update such assignments any time an existing strategy is amended or a new strategy is created that would change such assignment.[140]

The Commission acknowledges that categorization of order routing strategies for institutional orders would be an internal process for a broker-dealer, and, therefore, the methodologies for such process would likely not be entirely consistent *across* broker-dealers, which could result in an order routing strategy being placed in a different category by different broker-dealers. Such inconsistency could make it difficult for institutional customers to effectively compare institutional order handling reports across their broker-dealers. However, the Commission preliminarily believes that the potential inconsistencies of categorization would only occur at the margins among order routing strategies, where characteristics of the strategy could be viewed differently by different broker-dealers. For example, one broker-dealer might reasonably classify a mixed strategy that mostly provides liquidity as being "neutral," whereas another broker-dealer might reasonably categorize the same strategy as "passive." Even if broker-dealers differ at the margins in their categorization of similar order routing strategies, the Commission preliminarily believes that grouping order routing strategies by these three broad categories would still allow for meaningful comparison of order handling practices across broker-dealers.

The Commission recognizes that customers may have different investment strategies and provide specific order handling instructions that will affect how a broker-dealer handles an institutional order and utilizes various venues. The Commission preliminarily believes that if it were to require that the disclosures be categorized only by venue, the disclosures would contain aggregated order routing strategy data that might be less useful in analyzing how a broker-dealer implements the customer's trading decisions. The Commission preliminarily believes that disclosing the proposed institutional order handling information by category of order routing strategy should allow customers to better evaluate a broker-dealer's order handling practices for orders that are handled using similar strategies.

In addition, a customer's order handling instructions may vary at particular points in time depending on a number of different factors. For instance, at certain times a customer may need to quickly liquidate or acquire a position, in which case an aggressive order routing strategy may be appropriate. At other times, speed may not be a primary concern and thus a passive order routing strategy may be appropriate. Because these types of order routing strategies use different methods to liquidate or acquire a position, the order routing strategies may use venues for different purposes. The Commission preliminarily believes that disclosing the required institutional order handling information by passive, neutral, and aggressive strategy for each venue will provide more transparency to customers and a means to understand better which venues are being used as part of a particular strategy. Moreover, the Commission preliminarily believes that the three broad categories should provide a means for customers to ascertain whether a broker-dealer in the aggregate is handling its institutional orders pursuant to its instructions. For example, if a customer instructs its broker-dealer to use mostly passive order routing strategies, the customer could use the institutional order handling report to monitor the use of passive, neutral and aggressive order routing strategies during the reporting period. Finally, the Commission preliminarily believes that, notwithstanding the limitations on comparisons described above, categorizing the proposed institutional order handling information by these three strategies would allow a customer to compare order routing strategies across its broker-dealers.

The Commission acknowledges that broker-dealers may want to prevent other market participants from reverse engineering their proprietary order routing strategies. Thus, the Commission is not proposing to require broker-dealers to disclose detailed methodologies of their order routing strategies. Rather, the Commission is proposing to require broker-dealers to group their various order routing strategies for institutional orders into three categories[141]—passive, neutral, aggressive—which it preliminarily believes should provide valuable transparency to customers while not disclosing proprietary aspects of a broker-dealer's order routing strategies.

The Commission requests comment on its proposal that the customer-specific institutional order handling report be categorized by venue and order routing strategy category. In particular, the Commission solicits comment on the following:

31. Do commenters believe that disclosure by venues and order routing strategies would be useful to customers placing institutional orders? Are there other ways to categorize the disclosures than by venue and order routing strategies that would be more useful to institutional customers? If so, please explain. Should the Commission consider other methods in providing customer-specific institutional order handling reports? If so, please explain the alternative approach and provide data, if possible.

32. Do commenters believe that disclosure of order routing strategies categorized by passive, neutral, and aggressive would be useful? Should any of these proposed categories be modified or deleted? Are there other categories of strategies that would be more meaningful? Please explain and provide data to support your arguments.

33. Are broker-dealers able to classify their order routing strategies into the three proposed strategy categories? Are there other strategy categories that should be considered?

34. Do commenters believe that customers would have sufficient information to meaningfully compare how their institutional orders were handled by different broker-dealers in light of the fact that each broker-dealer would establish its own categorization of routing strategies?

35. Do commenters agree that potential inconsistencies of categorization will only occur at the margins and grouping order routing strategies by the three broad categories would still allow for meaningful comparison of order handling practices across broker-dealers?

36. Do commenters believe that broker-dealers would be able to produce their order handling statistics in such a manner to favor one strategy over another in an effort to enhance the perception of the services provided? If so, should modifications or additions be made to address this? Further, please explain and provide data, if possible.

37. Should the Commission further define the three order routing strategies, and if so, how? Should routing strategies be defined at all? If not, how should order handling practices be expressed to allow for an effective comparison? Do commenters believe that there is benefit in having the strategies listed if there is no common definition among broker-dealers? Would the report still be useful to customers placing institutional orders in

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[139] *See id.*

[140] *See id.*

[141] *See id.*

evaluating their broker-dealers, but not comparing broker-dealers? Please support your arguments.

38. Are there other methodologies that the Commission should consider that would allow institutional customers to meaningfully compare order handling practices across broker-dealers? If so, please explain and provide support, if possible.

39. Would the lack of a more precise definition for the three order routing strategies affect the ability of broker-dealers to produce automated reports?

40. Would the lack of a more precise definition impact the ability of customers to compare order handling practices across broker-dealers?

41. Would disclosing information about the use of the three order routing strategies potentially reveal broker-dealers' sensitive proprietary information? Please be specific about what information and the impact of disclosure.

42. Under the proposal, broker-dealers would be required to document the specific methodologies they rely upon for making assignments of institutional orders to the three order routing strategies. Should these methodologies be made available, in the normal course or upon request, to customers and/or the public? Would disclosure of this information be useful to customers? When a broker-dealer changes its methodology, should it be required to notify its customers or the public of the change, and/or should it be required to restate prior reports "as if" such new methodology had been in place? Would such restatements be useful to customers or potential customers? If so, how? Should such restatements be required for certain material changes in methodology? If so, for which prior reports should restatements be made (*e.g.,* the most recently provided report)? Even if the broker-dealer's methodology is not provided to customers or the public, should they be notified if and when such methodology changes? Why or why not? Please explain. Would transparency regarding the methodologies create risks with respect to sensitive proprietary information of the broker-dealers? If yes, please identify the specific information linked to the risk.

43. Do commenters believe that the Commission should specify how broker-dealers would address a misclassification of a particular order routing strategy? If so, how should broker-dealers be required to address the misclassification? For example, do commenters believe that broker-dealers should be required to promptly provide corrected reports to customers and the public? Similarly, should the Commission specify how a broker-dealer would address situations in which it determines that any data in a previously provided order handling report is inaccurate? For example, do commenters believe that broker-dealers should be required to promptly furnish corrected reports to customers and/or promptly correct any publicly available reports? Why or why not? Would the dissemination of corrected reports be useful to customers placing institutional orders, and if so for which prior reports would it be useful? Separately, do commenters believe that there should be a materiality threshold for corrections to either the misclassification of order routing strategies or any other inaccuracy in data provided? If so, what would be an appropriate threshold? Please explain and provide data to support your arguments, if possible. As an alternative to a materiality standard, are there other measures that should determine whether a misclassification or other inaccuracy would necessitate a corrected report? For example, if the misclassification or other inaccuracy could impede trend analysis, should that necessitate a corrected report? Please explain.

4. Report Content

a. Information on the Customer's Order Flow With the Reporting Broker-Dealer

The Commission also proposes that the report include information on the customer's order flow with the broker-dealer. Specifically, the Commission proposes to require disclosure of: (1) Total number of shares of institutional orders sent to the broker-dealer by the customer during the reporting period; (2) total number of shares executed by the broker-dealer as principal for its own account; (3) total number of institutional orders exposed by the broker-dealer through an actionable IOI; and (4) venue or venues to which institutional orders were exposed by the broker-dealer through an actionable IOI.[142] The Commission preliminarily believes that this information would be useful for customers to evaluate how much order flow the broker-dealer received from the customer during the reporting period, the methods the broker-dealer used to achieve executions for such order flow at the broker-dealer, the management of a broker-dealer's conflicts of interests, and the risk of information leakage associated with such methods.

The Commission preliminarily believes that it is important to require disclosure of the total number of shares of institutional orders sent to the broker-dealer by the customer during the reporting period to allow the customer to more easily compare the number of shares sent to the broker-dealer versus the number of shares routed by the broker-dealer. As noted above, a broker-dealer often will route orders numerous times, such that the aggregate order total may exceed the total size of the customer's original order flow. Although the information concerning institutional orders sent by the customer to the broker-dealer should be known by the customer, providing the customer with the amount of shares for the customer that the broker-dealer received over the period covered by the report should put in context other data provided in the institutional order handling report. Thus, the Commission preliminarily believes that a broker-dealer should be required to disclose the total number of shares of institutional orders sent by the customer to the broker-dealer. Moreover, because many customers use multiple broker-dealers to execute their institutional orders, requiring each broker-dealer to disclose the total number of shares of institutional orders sent by each customer would allow customers to more readily understand how much of their order flow was handled by a broker-dealer during the reporting period, which should help customers in comparing the order handling reports of their various broker-dealers.

The Commission further proposes that the report disclose the total number of shares executed by the broker-dealer as principal.[143] While customers currently receive disclosure of the number of shares executed by a broker-dealer as principal for each transaction pursuant to Rule 10b–10,[144] the Commission preliminarily believes that including the total number of shares executed by the broker-dealer as principal in the institutional order handling report, which would be an aggregate number of every transaction for the reporting period, would be useful to the customer so that such data would be in the same report as the other data the Commission is proposing to require for institutional orders. Such disclosure would allow customers to understand how often a broker-dealer trades against its institutional orders, and what order routing strategies lead to this type of activity. The Commission preliminarily believes that this data on the volume of institutional orders interacting with the broker-dealer as principal could be relevant to customers considering potential conflicts of interest their broker-dealers face when trading as principal against their orders, and their broker-dealers' compliance with best execution obligations.

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[142] *See* proposed Rule 606(b)(3).

[143] *See* proposed Rule 606(b)(3).

[144] *See* 17 CFR 240.10b–10. Further, the Commission preliminarily believes that it would be more efficient to require broker-dealers to include this as a line item in the proposed institutional order handling report than for customers to obtain information from the proposed reports, obtain information from Rule 10b–10 required disclosures, and combine the two to perform necessary analysis to evaluate order handling quality.

The Commission also proposes to require disclosure of the total number of institutional orders exposed by the broker-dealer through actionable IOIs as well as the venue or venues to which such orders were exposed. The Commission preliminarily believes that transparency into the method of exposing an institutional order through the use of actionable IOIs would provide useful information to customers. As discussed above, the Commission understands that broker-dealers may use actionable IOIs to attract trading interest from external liquidity providers. For example, before a broker-dealer routes an institutional order to another trading center, the broker-dealer may send an actionable IOI to select external liquidity providers to communicate to such liquidity providers to send orders to the broker-dealer to trade with the institutional order that is represented by the actionable IOI at the broker-dealer. While the use of actionable IOIs in this manner by broker-dealers may be beneficial in executing institutional orders, actionable IOIs also may reveal information that could be detrimental to the execution quality of the institutional order. The Commission preliminarily believes that identifying the total number of institutional orders exposed by a broker-dealer though actionable IOIs in the order handling disclosures[145] should give customers a more complete view of how their broker-dealers handle their institutional orders and allow them to better evaluate how their broker-dealer manages information leakage.

The Commission also proposes that broker-dealers disclose the venue or venues that were sent actionable IOIs. Venues that receive the actionable IOIs, such as external liquidity providers that trade proprietarily, could, but are not required to, respond to the actionable IOI by sending an order to the broker-dealer to execute against the trading interest represented by the actionable IOI. The Commission preliminarily believes that disclosure of institutional orders routed to a venue would not, alone, adequately capture a broker-dealer's order handling practices. As such, the Commission preliminarily believes that disclosure of the specific venue or venues that a broker-dealer exposed an institutional order by an actionable IOI would be useful for the customer to further assess the extent, if any, of information leakage of their orders and potential conflicts of interest facing their broker-dealers. Specifically, the Commission preliminarily believes that such information will enable customers to assess whether their broker-dealers are exposing their institutional orders to select market participants with affiliations, business relationships, or other incentives.

The Commission seeks comment on the disclosure of the reporting broker-dealer's information. In particular, the Commission solicits comment on the following:

44. Do commenters believe that disclosing the total number shares sent to a broker-dealer would be useful to customers placing institutional orders? Why or why not?

45. Do commenters believe that disclosure of the total number of shares executed by the broker-dealer as principal would facilitate understanding the broker-dealer's ability to manage its best execution obligations? Should additional or different information be required regarding institutional orders that are executed by the broker-dealer as principal? Please explain whether and how such additional or different information would be useful.

46. Do commenters believe that disclosure of the total number of shares executed by the broker-dealer as principal would be useful to customers for purposes of evaluating conflicts of interest? Why or why not?

47. Do commenters believe that the institutional order handling report should disclose the total number of institutional orders exposed through an actionable IOI? Is this data useful for customers to evaluate their broker-dealers' institutional order handling practices? Why or why not? Would such disclosure guide customers in better understanding the potential of information leakage of their institutional orders?

48. Do commenters believe that broker-dealers should disclose the venues to which it sends actionable IOIs? Would this information help customers understand how financial incentives or business relationships might impact their orders? Would this information help customers evaluate the risk of information leakage?

49. Do commenters believe there are other data points that would be useful to customers that should be disclosed on institutional order handling reports? If yes, please explain how such data would be useful to customers.

b. Information on Order Routing

Within the venue and order routing strategy segmentations described above, the Commission proposes to require disclosure of information with respect to order routing.[146] The Commission preliminarily believes that information regarding order routing and the size of orders routed, both the aggregate and average order size, would be useful for customers to understand where and how their institutional orders are being routed or exposed to assess the risk of information leakage and any potential conflicts of interest on the part of their broker-dealers. The Commission proposes to require, within each venue and strategy category, disclosure of: (1) Total shares routed; (2) total shares routed marked immediate or cancel ("IOC");[147] (3) total shares routed that were further routable; and (4) average order size routed.[148]

Disclosing total shares routed[149] for each of the required categories would allow customers to readily compare the total shares sent to the broker-dealer, as described above, with the total shares routed by the broker-dealer, which would shed light on the number of shares needed to be routed to fill the institutional orders as well as the potential for information leakage. In addition, disclosing the total shares routed to each venue in total as well as by order routing strategy would provide a customer with information on which venues were used in the process of executing its institutional orders, which strategies were used for each venue, and the extent of such use. The strategies disclosure, coupled with information on fill rates and fee models as further described below, would allow customers to determine whether its broker-dealers are routing orders consistent with the customer's trading objectives. For example, if a broker-dealer routes a significant portion of aggressive orders to a venue that pays a rebate for removing liquidity and the broker-dealer receives a low fill rate from that venue, the customer could ask the broker-dealer why it routes orders seeking liquidity to a venue that rarely executes those orders and whether doing so is consistent with the customer's trading objectives.

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[145] *See* proposed Rule 606(b)(3)(i)(B).

[146] *See* proposed Rule 606(b)(3).

[147] An order marked IOC will execute immediately at a trading center if liquidity is available at or better than the limit price of the order or otherwise will be immediately canceled. *See* Concept Release on Equity Market Structure, *supra* note 2, at 3607 n. 69.

[148] *See* proposed Rule 606(b)(3)(i).

[149] *See* proposed Rule 606(b)(3)(i)(A).

The proposed rule would also require disclosure of the total number of shares routed marked IOC,[150] and the total number of shares routed that were further routable.[151] The Commission preliminarily believes that requiring disclosure of these two order characteristics would provide customers a greater understanding of the kind of order flow a broker-dealer sends to each venue and how a broker-dealer uses a venue. For example, orders that are marked IOC are orders that seek to access liquidity at a venue rather than provide liquidity by posting to the venue's book. If no contra side interest is available at the venue at the order's limit price, the order will be canceled back to the broker-dealer. A customer could compare the number of shares routed to a venue marked as IOC with the total shares routed to a venue to understand whether the broker-dealer allows its orders to rest on a venue's book or is primarily seeking to access liquidity at a venue. The Commission is also proposing to require that the broker-dealer disclose the total shares routed that are marked IOC by order routing strategy, which would highlight how the broker-dealer utilizes IOC orders in its various order routing strategies. For example, a customer could assess the rate at which a broker-dealer uses IOC orders by order routing strategy and determine if such rate is consistent with its trading objectives.

In addition, requiring the total shares routed that were further routable would allow the customer to understand whether the broker-dealer allows its orders to be routed by the venue to other venues. Such "re-routing" of orders creates the potential for information leakage every time an order is routed on to another venue. Moreover, customers would be able to determine whether their broker-dealers are in control of the routing of their orders or are relinquishing control of order routing to another entity. In addition, disclosure by order routing strategy would highlight how the broker-dealer utilizes routable orders in its various order routing strategies. For example, a customer could assess the rate at which a broker-dealer uses routable orders by order routing strategy and determine if such rate is consistent with its trading objectives.

Finally, the report would require the disclosure of average order size routed.[152] The Commission preliminarily believes that requiring disclosure of the average order size routed would provide the customer with information on the nature of a venue, how a venue is being used by a broker-dealer, and possibly what type of participants use a venue.[153] For example, if the average order size routed to a venue is relatively large, a customer may infer that the venue caters to market participants that are willing to trade in larger size. In addition, a customer could compare the average order size routed to a venue to the average fill size at the venue, as described below, to assess the size of orders routed relative to the potential execution. If the average fill size is relatively equivalent to the average order size routed, the customer may infer that the broker-dealer routed the order in a manner that minimized information leakage. If the average order size routed is greater than the average fill size, the customer may infer that the broker-dealer needed to route the order multiple times to receive full execution of the order. As noted in Section II.C.4., each additional route of an order reveals information about that order and such information leakage might cause prices to move in a less favorable direction to the detriment of execution quality. In addition, disclosure of average order size routed by order routing strategy for each venue would allow a customer to better understand the size of orders routed by strategy and determine if such size is consistent with its trading objectives.

The Commission requests comment generally on the order routing information proposed in Rule 606(b)(3)(i). In particular, the Commission solicits comment on the following:

50. Do commenters believe that disclosure of the four data points (total shares routed, total shares routed marked immediate or cancel, total shares routed that were further routable, and average order size routed) as proposed in Rule 606(b)(3)(i)(A)–(D) by both venue and strategy is useful? Should the four data points be defined? Are there other factors or order life cycle audit trail information that should be included in order routing information? Should some of the proposed factors be modified or eliminated? If so, which one(s) and why?

51. Do commenters believe it is useful to customers to know the total shares marked IOC and that were routed? Would the cancellation rate of orders be useful to customers placing institutional orders? Are there other order types for which disclosure should be required? If so, which types and why? Should broker-dealers be required to disclose all order types used to execute customer orders? Please explain.

52. Do commenters believe that orders that are not only routable, but are in fact routed on should also be required to be disclosed? Would such re-routing information be useful to customers in determining whether their broker-dealers are in control of the routing of their orders or are relinquishing control of order routing to another entity? Do commenters believe that such re-rerouting information is retrievable for broker-dealers? Why or why not?

c. Information on Order Execution

Within the venue and order routing strategy segmentations described above, the Commission also proposes to require disclosure of information with respect to order execution.[154] The Commission preliminarily believes that information regarding how institutional orders are executed, including fees paid and rebates received for executions, is important for customers to better understand and assess broker-dealer performance. The Commission proposes to require disclosure of: (1) Total shares executed; (2) fill rate;[155] (3) average fill size;[156] (4) average net execution fee or rebate;[157] (5) total number of shares executed at the midpoint; (6) percentage of shares executed at the midpoint; (7) total number of shares executed that were priced on the side of the spread more favorable to the institutional order; (8) percentage of total shares executed that were priced on the side of the spread more favorable to the institutional order; (9) total number of shares executed that were priced on the side of the spread less favorable to the institutional order; and (10) percentage of total shares executed that were priced on the side of the spread less favorable to the institutional order.[158]

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[150] *See* proposed Rule 606(b)(3)(i)(B).

[151] *See* proposed Rule 606(b)(3)(i)(C).

[152] *See* proposed Rule 606(b)(3)(i)(D).

[153] *See* Laura Tuttle, Division of Economic and Risk Analysis, SEC, *OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,* March 2014, *available at http://www.sec.gov/marketstructure/research/otc_trading_march_2014.pdf* (stating that order and trade sizes can provide information on how a venue is being used by traders, and possibly what type of participants use a venue). The Commission notes that it recently proposed amendments to regulatory requirements in Regulation ATS that would assist in enabling customers to obtain further detail on the nature of certain trading centers. *See supra* note 65.

[154] *See* proposed Rule 606(b)(3)(ii).

[155] Fill rate would be calculated by the shares executed divided by the shares routed.

[156] Average fill size would be the average size, by number of shares, of each order executed on the venue.

[157] The fee and rebate would be measured in cents per 100 shares, specified to four decimal places.

Disclosing the total shares executed[159] would provide customers with the means to understand how much of its order flow was executed at a particular venue and readily compare such information across venues. In addition, since the institutional order handling report would also be categorized by order routing strategy, disclosing the total shares executed would provide customers with the means to understand how much of its order flow was executed using passive, neutral, and aggressive order routing strategies at each venue. Requiring broker-dealers to disclose the total shares executed pursuant to order routing strategies could provide customers with more detailed information than they may currently receive from their TCA provider. Typically, third-party TCA providers do not have access to routing information and therefore would not be able to incorporate such information into their TCA offerings.

The Commission preliminarily believes that disclosure of the fill rate[160] would show customers, on a percentage basis, how much of their order flow was executed compared to how much of their order flow was routed. While customers could compute the fill rate by dividing the number of shares executed by the number of shares routed, the Commission preliminarily believes that it is useful for the fill rate to be disclosed in a separate column of information to allow customers to readily compare fill rates without required computations. Such execution information would provide customers the opportunity to assess how effective a venue is in filling its institutional orders as well as how effective particular order routing strategies are at the various venues. The fill rate is an important piece of execution information that helps customers in assessing execution quality received at a trading center, given the customers' strategy. For example, if a broker-dealer's aggressive order routing strategies routinely route to a venue with a low fill rate, it could prompt a discussion between the customer and the broker-dealer to understand the reasons why the broker-dealer favors such a low fill rate venue when using such strategies. While the broker-dealer may be able to explain its order handling practices without the disclosed information, there is currently very little transparency on the order handling decisions.

The Commission notes that providing customers' fill rate and average fill size[161] at each venue would allow customers to assess whether their broker-dealers are routing its orders to venues that can effectively execute the order. This information could be particularly useful to customers in comparing their fill rate to the average fill size at each venue across its broker-dealers and across a particular broker-dealer. For example, if a broker-dealer routinely routes orders to a venue with low fill rates, the customer could request from its broker-dealer more details regarding such venue, such as the existence of any preexisting business relationship or affiliation. Further, if a broker-dealer regularly routes orders with large average order size to a venue with a high fill rate but a low average fill size, such information may indicate to the customer that the broker-dealer might not be routing the customer's institutional orders in a manner designed to minimize information leakage, because the broker-dealer would need to continue to route additional orders to fill the order. Moreover, requiring the disclosure pursuant to order routing strategies would result in greater transparency into order handling decisions.

As proposed, the report would provide data on the average net execution fee or rebate (cents per 100 shares, specified to four decimal places).[162] The average net execution fee or rebate would disclose to customers potential economic incentives a broker-dealer faces when handling institutional orders. Providing customers with details on the economic incentives of broker-dealers at trading centers would allow customers to more effectively assess any potential conflicts of interest its broker-dealers face when routing its institutional orders. For example, with such information, a customer would be able to compare the average net execution fee or rebate on particular venues in light of other order handling information at the venues like the total shares routed and the fill rate. If a broker-dealer routes a large number of shares to a venue with a low fill rate but that venue provides a significant rebate for orders executed, a customer may seek to inquire about the benefits of routing such a large amount of order flow to that venue.

The Commission acknowledges that, depending on the arrangement between a broker-dealer and its institutional customer, a broker-dealer may directly pass on execution fees and rebates to its institutional customer. In such instance, any economic incentives to route orders to certain trading centers would not present a potential conflict of interest, as the broker-dealer would not be benefiting from receipt of fees or rebates. The Commission preliminarily believes that a broker-dealer that directly passes on execution fees or rebates to its customers should nonetheless provide the average net execution fee or rebate in the report so that, among other things, the customer has a means to verify that no conflict of interest existed between the broker-dealer and a particular trading center through comparing the execution fees and rebates it received directly through its broker-dealer to the average net execution fee or rebate disclosed in the report.

Moreover, broker-dealers would be required to disclose the average net execution fee or rebate by order routing strategy. Such disclosure would allow customers to assess whether there are conflicts of interest in the broker-dealer's routing decision. For example, if in connection with an aggressive order routing strategy, the broker-dealer routinely routes orders that remove liquidity to venues with rebates for removing liquidity but a low fill rate, it may indicate to the customer that the broker-dealer may not be acting consistent with the customer's trading objectives.

The report would further disclose the total number of shares executed at the midpoint and the percentage of shares executed at the midpoint.[163] Many trading centers offer users the ability to post orders at the midpoint of the NBBO, and incoming marketable orders can execute against such orders.[164] Midpoint execution information would provide a customer with greater information on the execution quality of the venue and the type of liquidity resting at a venue. For example, the midpoint is generally considered to be a higher quality execution than the NBBO because both the buyer and the seller receive price improvement over the best displayed price, and an order at the midpoint generally has less impact on price since the execution does not remove the best displayed price.[165] Customers would be able to examine when they receive midpoint price improvement and at which venues. Coupled with the other required disclosures such as the average net execution fee or rebate and fill rate, customers could further assess the potential for conflicts of interest facing their broker-dealers that may affect the broker-dealer's institutional order routing practices. For example, if a broker-dealer routes a large number of shares to a venue that provides a significant rebate for orders executed but where the customer receives a low fill rate and a low percentage of its shares executed at the midpoint, a customer may seek to question the broker-dealer regarding the benefits of routing such a large amount of order flow to that venue. As proposed, broker-dealers would also be required to disclose the total number of shares executed at the midpoint and the percentage of shares executed at the midpoint by order routing strategy, which should allow customers greater insights into which order routing strategies generate midpoint executions and which venues are providing midpoint executions.

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[158] *See* proposed Rule 606(b)(3)(ii).

[159] *See* proposed Rule 606(b)(3)(ii)(A).

[160] *See* proposed Rule 606(b)(3)(ii)(B).

[161] *See* proposed Rule 606(b)(3)(ii)(C).

[162] *See* proposed Rule 606(b)(3)(ii)(D).

[163] *See* proposed Rule 606(b)(3)(ii)(E)–(F). The midpoint would be the price halfway between the national best bid and national best offer.

[164] *See, e.g.,* Rule 11.9(c)(9) of the Bats BZX Exchange, Inc. ("Bats BZX") (defining Midpoint Peg Order); Rule 4702(d) of The NASDAQ Stock Market LLC (defining Midpoint Pegging); Robert P. Bartlett, III and Justin McCrary, *Dark Trading at the Midpoint: Pricing Rules, Order Flow and Price Discovery* (February 12, 2015) ("Bartlett and McCrary Paper"), *available at http://www.stern.nyu.edu/sites/default/files/assets/documents/2%20Bartlett%20and%20McCrary%20Shall%20We%20Haggle.pdf* (describing midpoint trading on non-exchange venues).

The report would also require disclosure of the total number and percentage of shares executed that were priced on the side of the spread more favorable to the institutional order and the total number and percentage of shares executed that were priced on the side of the spread less favorable to the institutional order.[166] Information with respect to which side of the spread orders executed on would help customers assess the execution quality their institutional orders received, which in connection with the order routing strategy disclosures and the fees and rebates disclosures, would allow customers to better evaluate the performance of its broker-dealers. For example, if the customer's strategy is to be passive, but its broker-dealer is frequently routing orders to a venue or venues that are taking liquidity at the side of the spread less favorable to the institutional order, then the customer could further inquire about the broker-dealer's rationale for routing to such venue. The Commission preliminarily believes that requiring these granular details of how institutional shares are executed should provide customers with more information to evaluate the quality of their broker-dealers' order handling services.

Comment is generally requested on order execution information as proposed in Rule 606(b)(3)(ii). In particular, the Commission solicits comment on the following:

53. Should any of the terms in proposed Rule 606(b)(3)(ii) be defined? Should the information proposed to be required be modified in any way, should additional information related to order execution be required, or should any proposed requirement be omitted? Please explain.

54. Do commenters believe that the required order execution information would be useful to institutional customers? Please explain with respect to each of the proposed institutional order disclosure categories.

55. Do commenters believe that disclosures regarding fill rates and average fill size would assist institutional customers in understanding how much of their orders are executed at a venue versus routed on to another venue? Are there other data that would be useful in analyzing order execution?

56. Would disclosures related to execution fees and rebates be useful to institutional customers? Would this information support an evaluation of a broker-dealer's potential economic incentives and/or conflicts of interest to route and/or execute orders at a particular venue? Please provide support for your arguments.

57. Do commenters believe that the total number and percentage of shares executed at the midpoint indicate higher quality executions? Would this information be useful to customers interested in examining their institutional order execution quality? Please explain.

58. Do commenters believe that information on the shares executed on the side of the spread favorable or less favorable to the institutional order would be useful to institutional customers in analyzing their broker-dealer's order handling practices? What other order execution data, if any, would be useful to customers? Would information on shares executed against displayed or undisplayed liquidity be useful? Should any of the proposed requirements be modified or eliminated? If so, which ones and why? Please provide support for your arguments.

59. Do commenters believe that the proposed data points outlined above would provide customers with meaningful information? Would the proposed disclosures allow customers to better assess the execution quality of their broker-dealer? Would the report further permit customers to compare execution quality among multiple broker-dealers across the market? Would the report, as proposed, allow customers to more easily monitor for best execution?

d. Information on Orders That Provided Liquidity

In addition to the order routing and execution data detailed above, the Commission proposes to require disclosure of information on institutional orders that provided liquidity within the venue and order routing strategy segmentations described above.[167] In connection with this new requirement, the Commission proposes to define the term "orders providing liquidity" to mean "orders that were executed against after resting at a trading center."[168] Generally, orders providing liquidity are submitted as non-marketable limit orders and are kept in a limit order book awaiting execution. The Commission preliminarily believes that by defining "orders providing liquidity" and "orders removing liquidity" (described in more detail below), broker-dealers would be able to classify orders pursuant to a standardized description for disclosure purposes.

The Commission preliminarily believes that disclosure of information on institutional orders that provided liquidity is important for customers to better understand to which venues the broker-dealer routes liquidity providing orders, how long it takes to execute such orders at each venue, and the fees paid to or rebates received by the broker-dealer at each venue for liquidity providing orders. The Commission proposes to require disclosure of: (1) Total number of shares executed of orders providing liquidity; (2) percentage of shares executed of orders providing liquidity; (3) average time between order entry and execution or cancellation for orders providing liquidity (in milliseconds); and (4) the average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).[169]

The information on orders that provided liquidity would include the total number of shares executed of orders providing liquidity and the percentage of shares executed of orders providing liquidity.[170] The Commission preliminarily believes that the total number of shares executed of institutional orders providing liquidity would inform an institutional customer of how much of its order flow provided liquidity at each venue and by order routing strategy. Such information is important for an institutional customer to understand how a broker-dealer is implementing its order execution and routing strategies and at what venues. The Commission also preliminarily believes that the percentage of shares executed of orders providing liquidity would be useful for an institutional customer to readily assess the amount of shares that provided liquidity at a venue in comparison to the total number of shares executed at the venue. Since broker-dealers would also be required to disclose this information by order routing strategy, institutional customers would have further data to better understand and analyze how a broker-dealer routes orders for various strategies and the potential effect on execution quality.

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[165] *See, e.g.*, Bartlett and McCrary Paper, *supra* note 164 (stating that midpoint of the NBBO is a form of trading that is generally considered to have significant benefits for institutional investors).

[166] *See* proposed Rule 606(b)(3)(ii)(G)–(J).

[167] *See* proposed Rule 606(b)(3)(iii).

[168] *See* proposed Rule 600(b)(55).

[169] *See* proposed Rule 606(b)(3)(iii).

The institutional order handling report also would require data on the average time between order entry and execution or cancellation for orders that provided liquidity prior to execution or cancellation.[171] The average time between order entry and execution or cancellation for orders that provided liquidity would be measured in milliseconds, which, due to the speed of trading in today's equity markets, the Commission preliminarily believes is an appropriate measure. Disclosing the average length of time orders rest at venues before they are either executed or canceled could provide insight into how a broker-dealer utilized venues when seeking to execute institutional orders, specifically how long orders rest on order books before receiving an execution or being canceled and sent back to the broker-dealer for further handling. The Commission preliminarily believes that depending on the order routing strategy, the average length of time that orders are posted to a venue, and thus providing liquidity, could help indicate empirically whether the broker-dealer is appropriately implementing a customer's desired order routing strategy. For example, if a customer wanted its broker-dealer to handle its institutional order using a neutral order routing strategy, such strategy would generally seek to provide liquidity and not aggressively cross the spread, but speed of execution would still be of relative concern. A venue that pays a significant rebate for shares of orders providing liquidity would most likely have a deep book as many liquidity providing orders would post on that venue's book in order to receive the rebate. Due to the depth of book, the likelihood of receiving an execution for a liquidity providing order on that venue could be low and the average time between order entry and execution or cancellation for orders that provided liquidity could be relatively long. In combination with the average net execution rebate or fee for shares that provided liquidity, described below, customers could use the average time between order entry and execution or cancellation for orders being posted at that venue to assess how their broker-dealers are implementing order routing strategies or whether their broker-dealers may be influenced by the high rebate at such venue, in conflict with the customer's interests.

The report would also contain the average net execution rebate or fee for shares of orders providing liquidity.[172] The Commission proposes that the average net execution rebate or fee would be calculated in cents per 100 shares, specified to four decimal places, to correspond to current industry execution rebate and fee practices[173] and to ensure consistency in reporting among broker-dealers.[174] The Commission preliminarily believes that disclosing the average net execution rebate or fee for shares of orders providing liquidity at each venue and by order routing strategy would allow customers to assess potential conflicts of interest from economic incentives facing their broker-dealers with regard to the venues to which broker-dealers route orders and the order routing strategies that use those venues. For example, if a broker-dealer routes orders that provide liquidity to the venues with the highest rebate, and orders that remove liquidity to the venues with the lowest take fee, a customer could then examine the fill rates at those venues to determine whether there is potential for conflicts of interest with respect to the broker-dealer's own economic interest.[175] The Commission preliminarily believes that this information will be useful for customers to understand, and assess the potential effect of, economic incentives on execution quality.

The Commission requests comment on the disclosure requirements pertaining to institutional orders that provide liquidity as proposed in Rule 606(b)(3)(iii). In particular, the Commission solicits comment on the following:

60. The Commission proposes to define "orders providing liquidity." Do commenters believe that this term should be defined? Is the proposed definition useful to broker-dealers in categorizing an order for reporting purposes? Should it be modified in any way, including adding additional criteria? Why or why not?

61. Do commenters believe that the total number of shares executed of orders providing liquidity is the appropriate data to inform customers how much of its order flow provided liquidity? Are there other data factors that the Commission should consider?

62. Does the percentage of shares executed of orders providing liquidity provide information customers could use to evaluate how a broker-dealer is implementing its order execution and routing strategies and at what venues? Would this information be useful to customers in analyzing and potentially modifying their trading instructions or choosing a broker-dealer for order routing and execution services?

63. Do commenters believe that the average time between order entry and execution or cancellation (measured in milliseconds) for orders providing liquidity will be an appropriate measure of whether the broker-dealer is implementing a customer's order instructions? If not, why not? Do commenters believe that the "average" is the appropriate measure to gauge the amount of time an order is resting on the book? What are alternative data points or measurements that would achieve the same goal? Separately, is milliseconds an appropriate measure? If not, what would be more appropriate? Are there other time measures and/or data that would be useful to institutional customers in evaluating

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[170] *See* proposed Rule 606(b)(3)(iii)(A)–(B).

[171] *See* proposed Rule 606(b)(3)(iii)(C).

[172] *See* proposed Rule 606(b)(3)(iii)(D).

[173] *See, e.g.*, Bats BZX Exchange, Inc. Fee Schedule, *available at http://www.batstrading.com/support/fee_schedule/bzx/*; Rule 7018 of The NASDAQ Stock Market LLC, *available at http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F6&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F* (pricing execution fees and rebates to four decimal places).

[174] *See* proposed Rule 606(b)(3)(iii)(D).

[175] Typically, broker-dealers pay fees and receive rebates that result from routing orders of retail customers. For orders from institutional customers, it depends on the arrangement between an institutional customer and a broker-dealer: the broker-dealer may pay fees and receive rebates that result from routing orders of the institutional customer, or the broker-dealer may pass those fees and rebates through to the institutional customer. In the case where a broker-dealer passes the fees and rebates through to the customer, there would not be potential conflicts of interest in the broker-dealer's order routing decisions with respect to fees and rebates.

whether the broker-dealer is implementing their order instructions? If so, please explain and provide data to support your argument.

64. Do commenters believe that disclosing the average net execution rebate or fee for shares of orders providing liquidity at each venue and by order routing strategy would be useful in assessing potential conflicts of interest broker-dealers may face with regard to routing venues and the order routing strategies that use those venues?

65. Do commenters believe that specifying the average net execution fee or rebate to four decimal places is appropriate? If not, to what level of precision should the fee or rebate be specified? Please explain and provide data for your argument.

e. Information on Orders That Removed Liquidity

Similarly to orders that provided liquidity, the Commission proposes to require the disclosure of information on institutional orders that removed liquidity within the venue and order routing strategy segmentations described above.[176] Related to this new disclosure, the Commission proposes to define the term "orders removing liquidity" to mean "orders that executed against resting trading interest at a trading center."[177] Generally, orders that remove liquidity are marketable orders that are immediately executable when routed to a venue and execute against and remove orders that are resting on a trading center's order book. The Commission preliminarily believes that the defined term should reduce any potential broker-dealer confusion when distinguishing orders for reporting purposes and would allow all broker-dealers to more consistently designate certain orders as orders removing liquidity.

The Commission preliminarily believes that disclosure of information on institutional orders that removed liquidity will be useful for customers to understand which venues their broker-dealers route liquidity removing orders to and the fees paid or rebates received at each venue for such orders. The Commission proposes to require disclosure of: (1) Total number of shares executed of orders removing liquidity; (2) percentage of shares executed of orders removing liquidity; and (3) average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).[178]

As proposed, the report would require data on the total number of shares executed and the percentage of shares executed of orders removing liquidity.[179] The Commission preliminarily believes the number of shares and the percentage of shares executed that removed liquidity at each venue would allow the customer to understand how much of its total institutional orders removed liquidity at a particular venue, as well as by order routing strategy. Coupled with the information on fill rates, customers could assess the risk of information leakage and the potential effect of the broker-dealer's routing practices on execution quality. For example, many market participants monitor their and other bids and offers for executions. When an execution occurs on one venue, market participants may adjust their bids or offers on other venues to take into account that there may be more trading interest to follow, which could result in prices moving away from the institutional order and ultimately resulting in the institutional order receiving a worse overall price for the full size of the institutional order. Indeed, the risk of information leakage and its potential negative impact on execution quality may be significant, if a broker-dealer routinely routes orders removing liquidity to a venue with insufficient liquidity to fill the orders. Using the proposed disclosures, customers could assess whether their broker-dealers routed their institutional orders that removed liquidity in the most effective manner to reduce the potential that prices move against the institutional order.

The institutional order handling report also would require disclosure of the average net execution fee or rebate for shares of orders that removed liquidity. Parallel to the information on orders providing liquidity, the average net execution fee or rebate for orders removing liquidity would be calculated in cents per 100 shares, specified to four decimal places, to correspond to current industry practice and to ensure consistency in reporting among broker-dealers.[180] Additionally, similar to the information on orders providing liquidity, this information would allow customers to examine the venues chosen by their broker-dealers, the order routing strategies used, and the economic interests motivating such choices. If a broker-dealer routinely routes orders that remove liquidity to a venue that pays a rebate to the broker-dealer or charges the lowest fee, the customer could examine whether there is a conflict of interest that affects how the broker-dealer handles its institutional orders, and if so, whether that conflict of interest has a negative impact on execution quality.

The Commission requests comment on disclosures for institutional orders that remove liquidity as proposed in Rule 606(b)(3)(iv). In particular, the Commission solicits comment on the following:

66. The Commission proposes to define "orders removing liquidity." Do commenters believe that this term should be defined? Is the proposed definition useful to broker-dealers in categorizing an order for reporting purposes? Should it be modified in any way, including adding additional criteria? Why or why not?

67. Do commenters believe that the total number of shares executed of orders removing liquidity is the appropriate data to inform customers how much of its order flow removed liquidity? Are there other data factors that the Commission should consider?

68. Does the percentage of shares executed of orders removing liquidity provide information customers could use to evaluate how a broker-dealer is implementing its order execution and routing strategies and at what venues? Would this information be useful to customers in analyzing and potentially modifying their order instructions and/or choosing a broker-dealer for order routing and execution services?

69. Do commenters believe that the average net execution fee or rebate for shares of orders removing liquidity at each venue and by order routing strategy would be useful in assessing potential conflicts of interest broker-dealers may face with regard to routing venues and the order routing strategies that use those venues?

70. Do commenters believe that specifying the average net execution fee or rebate to four decimal places is appropriate? To what level of precision should the fee or rebate be specified? Please explain and provide data for your argument.

5. Public Report for Institutional Orders

The institutional order handling disclosures, described above, would provide detailed information to a requesting customer with regard to how all of its institutional orders were handled by a broker-dealer, broken down by calendar month. The Commission preliminarily believes that a publicly disclosed aggregated report (aggregating all customer information) could provide additional transparency into the broader institutional order handling practices of broker-dealers, which could, in turn, allow for more efficient and effective comparisons of the quality of services offered by broker-dealers. As noted above, in today's complex equity markets, it may be difficult for customers to assess the order handling services of multiple broker-dealers without standardized order handling disclosures, particularly the services of broker-dealers with which they do not have a relationship.

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[176] *See* proposed Rule 606(b)(3)(iv).

[177] *See* proposed Rule 600(b)(56).

[178] *See* proposed Rule 606(b)(3)(iv)(A)–(C).

[179] *See* proposed Rule 606(b)(3)(iv)(A)–(B).

[180] *See* proposed Rule 606(b)(3)(iv)(C).

The Commission preliminarily believes that aggregated public disclosure of the information contained in the customer-specific institutional order handling reports, described above, would be useful to institutional customers and other market participants to determine whether to engage the services of a broker-dealer as well as the ability to gauge the adequacy of the services performed by a broker-dealer. The public disclosure by broker-dealers of aggregated institutional order handling information should promote competition as broker-dealers may seek to differentiate their services and expertise in an effort to retain current customers and attract the business of prospective customers. Indeed, the Commission preliminarily believes that public disclosure of institutional order handling information by each broker-dealer would provide market participants with useful information and could bring competitive forces to bear on broker-dealer institutional order handling services. Accordingly, the Commission preliminarily believes that aggregated public institutional order handling reports would increase the overall transparency of institutional order handling practices to the benefit of customers and the marketplace as a whole.

The Commission proposes to require a broker-dealer that receives institutional orders to make publicly available [181] a report that aggregates the information required for customer-specific institutional order handling reports, described above, for all institutional orders it receives.[182] Broker-dealers would be required to make such report publicly available for each calendar quarter, broken down by calendar month, within one month after the end of the quarter.[183] This public aggregated institutional order handling report would be mandatory for all of the institutional orders that a broker-dealer handles within a calendar quarter regardless of whether any of its customers request customer-specific institutional order handling reports.

Similar to the customer-specific institutional order handling reports required under proposed Rule 606(b), the public aggregated institutional order handling report would be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site.[184] The Commission preliminarily believes that requiring the public aggregated institutional order handling reports be provided in this format would be useful to customers as it would allow them to more easily analyze and compare the data provided in both types of reports, for the reasons discussed above, and would allow market participants generally to analyze and compare broker-dealer institutional order handling practices.[185]

In addition, the Commission proposes to require that broker-dealers keep such public aggregated institutional order handling reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.[186] The Commission preliminarily believes that making this historical data available to customers and the public generally will be useful to those seeking to analyze past order handling behavior of a broker-dealer or across multiple broker-dealers. To further support customers' usage of the public aggregated institutional order handling reports, the Commission notes that it would be incumbent upon the broker-dealer to maintain accurate order handling data during the three year period.

The Commission recognizes that broker-dealers have proprietary methods for order handling, and is cognizant of the sensitive nature of such business practices and intellectual property. The Commission preliminarily believes that the risk of exposing sensitive proprietary information on the broker-dealers' order handling techniques would be minimal due to the structure of the proposed report and by aggregating the information to be publicly disclosed. Like the proposed customer-specific institutional order handling reports, the proposed public aggregated institutional order handling report would aggregate a broker-dealer's order handling information for all NMS stocks for the reporting period, and, therefore, the Commission preliminarily believes other market participants would not be able to ascertain which particular securities were routed during the reporting period. Additionally, as routing decisions are generally dependent on the market for the particular security at the time of routing, the Commission preliminarily believes that public aggregated institutional order handling reports for the prior calendar quarter would not provide other market participants, including a broker-dealer's competitors, sensitive information about a broker-dealer's order handling techniques.

Further, while the public aggregated institutional order handling report would provide information on the venues to which a broker-dealer routed its institutional order flow as well as the three categories of order routing strategies used to route those orders, the report would not provide any information about the manner or sequence in which those orders were routed to the venues. For example, the report would not disclose whether the broker-dealer routed orders sequentially or simultaneously to multiple trading centers in order to fully execute an institutional order, or the sequence in which such orders were routed to trading centers. Because such information is essential to effectively reverse engineer an order routing algorithm, the Commission preliminarily believes that the proposed public aggregated institutional order handling information would not provide other market participants with the information to reverse engineer a broker-dealer's proprietary order handling techniques, regardless of the number of orders a broker-dealer routes or the number of institutional customers for which a broker-dealer routes orders during the reporting period. Accordingly, the Commission preliminarily believes that information contained in the proposed public aggregated institutional order handling report should provide appropriate safeguards for broker-dealers' current business practices, while, at the same time, providing meaningful information for customers and others to compare broker-dealers' order routing services.

The Commission also preliminarily believes that the risk of exposing sensitive customer-specific information would be minimal due to the structure of the proposed report and by aggregating the information to be publicly disclosed. As noted above, the proposed public aggregated institutional order handling report would aggregate order handling information for all NMS stocks for the reporting period and would not disclose the customers of the broker-dealer. To the extent a broker-dealer only had one or a few institutional customers to which it provided routing services, market participants could presume a customer's orders were included in the public aggregated institutional order handling report, but only to the extent the market participants knew of the routing relationship. However, even if a market participant is aware of such routing relationship, because the proposed public aggregated institutional order handling report would not disclose the specific securities routed and the historical data would reflect only previous calendar quarters, the Commission preliminarily believes that public disclosure would not expose sensitive information of the institutional customers.

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[181] The Commission notes that "make publicly available" is defined in Rule 600(b)(36) of Regulation NMS to mean "posting on an Internet Web site that is free and readily accessible to the public, furnishing a written copy to customers on request without charge, and notifying customers at least annually in writing that a written copy will be furnished on request." *See* 17 CFR 242.600(b)(36).

[182] *See* proposed Rule 606(c).

[183] *See id.*

[184] *See supra* Section II.A.3.

[185] *See id.*

[186] The Commission notes that it is proposing similar reporting format and accessibility requirements for quarterly reports on retail order routing in Rule 606(a)(1), which is discussed in more detail in Section III.B.4. below.

The Commission understands that many customers currently request information about a broker-dealer's order handling practices before engaging its services.[187] Generally, these requests are questionnaires regarding order routing strategies used by the broker-dealer and the venues to which the broker-dealer routes orders.[188] The Commission understands that the information requested in the questionnaires and the responses provided are generally not uniform, and, therefore, not readily comparable across multiple broker-dealers. While customers would continue to be able to use their specific questionnaires, the Commission preliminarily believes that a standardized report reflecting the order handling information for all of a broker-dealer's institutional orders for the past calendar quarter would greatly enhance their ability to understand how the broker-dealer routes and executes institutional orders and would also allow them to compare the execution quality of their orders against the execution quality of all of a broker-dealer's institutional orders. In addition, the standardized structure of the public aggregated institutional order handling report would provide all customers, regardless of size or sophistication, with the means to compare and contrast how broker-dealers implement passive, neutral, and aggressive order routing strategies, and the quality of executions received with respect to such strategies.

Moreover, the public disclosure of aggregated institutional order handling information would provide academics and others, including third-party vendors offering analytical services, access to order routing and execution information that would not otherwise be available.

Finally, the Commission notes that the proposed public aggregated institutional order handling reports differ from the current reports on retail order routing required pursuant to Rule 606(a).[189] The Commission preliminarily believes that such distinction is appropriate because institutional orders are generally large and may be complex, in contrast to retail orders that are of smaller size, utilize different routing strategies, and which typically have less impact on the market. Specifically, due to the large size of institutional orders, it may be difficult to fully fill the orders by executing against displayed bids or offers resting on a trading center. Instead, institutional orders are often broken up into child orders, routed to multiple trading centers, and filled at multiple price levels which may result in potential information leakage[190] and unfavorable price movement to the institutional order.[191] As such, broker-dealers often employ more complex order routing strategies when handling institutional orders to reduce the potential information leakage and unfavorable price movement.[192] Conversely, marketable retail orders are generally internalized by broker-dealers at prices at or slightly better than the NBBO, with very little risk of information leakage and impact on the market. If not internalized, retail orders, due to their smaller size are typically routed to a single trading center and fully executed. While the potential for information leakage of a retail order is low, even if order information is exposed, there is little influence on the retail order as it would likely already be fully executed. Due to these differences, the Commission preliminarily believes that because retail orders are not subjected to similar risks of potential information leakage and disadvantageous price impact as with institutional orders, the use of the proposed aggregated reporting of information for institutional orders—including order routing and execution and orders providing and removing liquidity—to among other things, monitor broker-dealers' management of these risks would not be pertinent for retail orders.

The Commission requests comments on information contained in the public aggregated institutional order handling reports by broker-dealers. In particular, the Commission solicits comment on the following:

71. Do commenters believe that aggregated institutional order handling information being publicly disclosed would be useful to institutional customers and other market participants? Who would it be useful to and in what ways?

72. Do commenters believe that the aggregated institutional order handling information proposed by Rule 606(c) should be disclosed for both retail and institutional orders, rather than only for institutional orders as proposed? Why or why not? Please provide support for your argument.

73. Should the public aggregated institutional order handling report include all the data points enumerated in proposed Rule 606(b)(3)(i)–(iv)? Why or why not? If not, which data points should be excluded or modified? Are there other data points the Commission should consider that would be useful to customers and the public? Please explain and provide data, if possible.

74. Do commenters believe that broker-dealers should be required to provide the public aggregated institutional order handling report in the proposed format? Why or why not? Do commenters believe that providing the report in a structured XML format will facilitate comparison of the data across broker-dealers? If not, why not? Do commenters believe that a structured XML format would be useful to customers and other market participants, and if so how? What incremental costs or savings would broker-dealers incur in providing the report in a structured XML format? Should the Commission consider alternative formats? If so, please explain the alternative formats and associated benefits and costs. Do commenters believe that it would be useful for broker-dealers to also provide the report in an instantly readable PDF format? If not, why not? Are there other formats

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[187] *See* TM Memo re Morgan Stanley I, *supra* note 43.

[188] *See id.*

[189] Rule 606(a) currently requires the reporting of the percentage of total orders that were non-directed orders, and the percentages of total non-directed orders that were market orders, limit orders, and other orders, the percentages of such orders routed to the Specified Venue, and a discussion of the material aspects of the broker-dealer's relationship with each Specified Venue (including a description of any arrangement for payment for order flow and any profit-sharing relationship). *See* 17 CFR 242.606(a)(1).

[190] *See* Bunge Article, *supra* note 69.

[191] *See* Bartlett and McCrary Paper, *supra* note 164, at 5 (discussing order size and its relation to price impact).

[192] *See* Concept Release on Equity Market Structure, *supra* note 2, at 3602.

that would be more appropriate? If so, please explain the alternative formats and benefits and costs.

75. Do commenters believe that the rule should include a de minimis exemption for broker-dealers that receive, in the aggregate, less than a certain threshold number or dollar value of institutional orders? Why or why not? If so, what would be the appropriate threshold number or dollar value of institutional orders a broker-dealer should need to receive from all customers in the aggregate before it would be required to provide the public order handling reports? Please explain. Separately, are there alternative approaches to reduce the compliance costs on broker-dealers with few institutional customers? Please provide data to support your arguments.

76. Regarding broker-dealers with a small number of institutional customers, do commenters believe there is a potential risk of exposing the customer's sensitive, proprietary information in an aggregated report? Should the Commission make any modifications to the proposed disclosures or eliminate any or all of the proposed requirements under certain circumstances? If so, what is the appropriate measure? Please provide support for your argument.

77. Do commenters believe that a broker-dealer that routes less than a certain number of orders should be exempt from the public disclosure requirement? Why or why not? What is an appropriate threshold for this potential exemption? Separately, are there alternative approaches to reduce the compliance costs on broker-dealers who route and execute few institutional orders? Please provide data to support your arguments. What information, if any, should the broker-dealer be required to provide to customers and/or the public if it relies on the potential exemption?

78. Do commenters believe that the public reports would be useful to customers and the public in comparing the quality of services offered by broker-dealers? Do commenters believe that public disclosure of aggregated institutional order handling information will enhance competition among broker-dealers?

79. Do commenters believe that publicly releasing aggregated institutional order handling reports on a quarterly basis is appropriate? Should the report be publicly disclosed at a different interval, such as monthly? Please explain.

80. Do commenters believe that the requirement that the reports be broken down by calendar month is useful? Should the report be broken down with a different interval(s)? Please explain.

81. Do commenters believe that the aggregated institutional order handling information will be stale if published one month after the end of the quarter? Should the disclosures be available earlier or later? Please explain.

82. Will aggregating the information being publicly disclosed mitigate the risk that the disclosure will reveal sensitive, proprietary information about the broker-dealer's order handling practices? Will it mitigate the risk that the disclosure will reveal sensitive proprietary information about customers' trading strategies? Why or why not? Are there alternative approaches to protecting such information while still requiring the public disclosure of meaningful order handling information? Are there other benefits or risks associated with publicly disclosing aggregated institutional order handling information?

83. Should the Commission require that each quarterly report be publicly available for a designated amount of time? If so, is three years a reasonable amount of time that the reports should be available? Would a shorter or longer period be more appropriate? How, if at all, would a shorter or longer disclosure period impact investors placing orders or broker-dealers? Please explain.

84. Should the Commission require all broker-dealers to make their aggregated institutional order handling reports available on one centralized Web site? For example, should all broker-dealer reports be available on the SEC's Web site? Alternatively, should the SEC's Web site have hyperlinks to the Web sites of broker-dealers where they display their aggregated reports? Why or why not?

85. As proposed, broker-dealers would be required to "make publicly available," as defined in Rule 600(b)(36) of Regulation NMS, their aggregated public institutional order handling reports, which means, among other things, that such reports must be posted on an Internet Web site that is free and readily accessible to the public. Do commenters believe that broker-dealers might place restrictions on or impediments to obtaining the reports from their own Web sites, such as requiring agreement with certain terms, conditions, or provisions prior to being provided access to the reports? If so, what would be the costs and benefits of those restrictions or impediments? Please explain.

86. Should the Commission require that the aggregated institutional order handling reports be filed with or furnished to the SEC? Should the Commission require that the individual order handling reports provided to customers with institutional orders be filed with or furnished to the SEC? Why or why not?

B. Disclosures for Retail Orders

As noted above, changes to market structure and order routing practices have led the Commission to analyze the current requirements for retail orders under Rule 606. Currently, Rule 606 reports allow customers to assess order routing and execution services of broker-dealers with respect to retail orders. Additionally, the Rule 606 reports are used by broker-dealers as a means to compare their order routing and execution services to that of other firms.[193] Some market participants have stated that public disclosure of meaningful data in Rule 606 reports can assist broker-dealers in evaluating their own trade execution performance relative to other firms.[194] The Commission preliminarily believes that Rule 606 reports spur competition among broker-dealers to provide enhanced order routing services and better execution quality, which in turn motivates trading centers to deliver more efficient and innovative execution services as they compete for order flow. The Commission preliminarily believes that investors ultimately benefit from such enhanced competition, as broker-dealers continually seek to enhance their order routing and execution services to achieve better execution quality for their customers and to attract business from prospective customers.

To preserve the benefits of Rule 606 reports and keep pace with market developments, the Commission preliminarily believes that it is appropriate to update Rule 606 to provide customers with enhanced disclosure regarding a broker-dealer's retail order handling practices. As discussed above in detail, currently, Rule 606 requires, among other things, broker-dealers that route "retail" orders to publicly disclose, on a quarterly and aggregated basis, certain information regarding non-directed orders in NMS securities by listing market and material aspects of relationships with Specified Venues.[195]

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[193] *See, e.g.,* NASDAQ Letter, *supra* note 19, at 20–21 (stating that, despite the fact that retail investors do not review 606 reports, the disclosure rules have positively impacted retail customers since the reports facilitate brokers' rigorous review of execution quality).

[194] *See, e.g.,* TD Ameritrade Letter, *supra* note 19, at 3–4 (stating that Rule 606 reports have performed a vital role in adding transparency to market center execution practices and that retail investors reap the ultimate benefit of the statistics); and Scottrade, Quarterly Order Routing Disclosure, *available at https://www.scottrade.com/online-brokerage/trade-quality-execution.html* (stating that "enhanced, meaningful transparency can serve as a catalyst for driving competition amongst industry participants to the ultimate benefit of the investing public").

1. Marketable Limit Orders and Non-Marketable Limit Orders

Currently, with respect to what would be defined as "retail" orders by this proposal, Rule 606 distinguishes broadly between "market orders" and "limit orders." Limit orders, however, fall into two categories: (1) Marketable limit orders, which are priced at or above the lowest offer in the market for a buy order or at or below the highest bid in the market for a sell order; and (2) non-marketable limit orders, which are priced to not execute immediately and seek to provide liquidity.[196] The distinction between a marketable and non-marketable limit order often is a significant factor in a broker-dealer's order routing practices. Broker-dealers have several options when deciding to route their customers' limit orders—they may (1) internalize and trade against customer order flow; (2) post the order; or (3) route the order to a third-party trading center.

The Commission preliminarily believes that, under the current rule, customers and other market participants cannot fully evaluate a broker-dealer's limit order routing practice if both marketable and non-marketable limit orders are combined into a single order category. The Commission preliminarily believes that classifying limit orders into marketable and non-marketable limit orders would allow customers and other market participants to more fully assess a broker-dealer's routing decisions for both types of orders and the potential impact on execution quality. The Commission also preliminarily believes that greater transparency between the routing practices of marketable and non-marketable limit orders would allow customers and other market participants to better assess whether broker-dealers are effectively managing their potential conflicts of interest. For example, the Commission understands that broker-dealers may be incentivized to route marketable and non-marketable limit orders to certain venues based on their fee or rebate schedule to the benefit of the broker-dealer. Providing greater public transparency between the routing practices of marketable and non-marketable limit orders could increase competition among broker-dealers and minimize the potential conflicts of interest between maximizing revenue and the duty of best execution.[197]

Currently, Rule 606(a)(1)(i) requires every broker-dealer's quarterly retail order routing report to include the percentage of total orders that were non-directed orders and the percentages of total non-directed orders that were market orders, limit orders, and other orders. In addition, Rule 606(a)(1)(ii) requires every broker-dealer's quarterly report on retail order routing to include the identity of the ten venues to which the largest number of non-directed orders were routed for execution, as well as any venue to which five percent or more of non-directed orders were routed (*i.e.*, collectively, Specified Venues). The Commission proposes to amend Rule 606(a)(1)(i) and (ii) to split limit orders and separately disclose them as marketable and non-marketable.[198] In connection with this proposed new requirement, the Commission is proposing to amend Rule 600 of Regulation NMS to include the definition of the term "non-marketable limit order," which is used in the proposed amendments to Rule 606(a). Specifically, the Commission proposes to define "non-marketable limit order" to mean "any limit order other than a marketable limit order." [199]

The Commission requests comment on the proposed amendments to Rules 600 and 606(a)(1)(i) and (ii). In particular, the Commission solicits comment on the following:

87. Do commenters believe that broker-dealers use Rule 606 reports as a means to assess how their order routing and execution services compare to other firms? Do commenters believe that the reports encourage competition among broker-dealers? Why or why not? If so, do investors in turn benefit from such increased competition? Please provide data to support your arguments.

88. Do commenters believe that Rule 606 quarterly reports continue to provide useful information for customers placing retail orders in assessing the quality of order execution and the routing practices of their broker-dealers? Why or why not? If not, how could the reports be improved to provide more useful information to retail customers? Please explain.

89. Do commenters believe that the proposed definition of non-marketable limit order is appropriate to distinguish the types of limit orders? Why or why not? Should the proposed definition be modified in any way? If so, please explain how.

90. Do commenters believe that separately reporting limit orders by marketable and non-marketable will enable customers placing retail orders to better understand broker-dealers' routing decisions and impact on best execution? Are there other ways in which that information might be useful to customers? Do commenters believe that the separate disclosure of marketable and non-marketable limit orders will be useful to broker-dealers, and if so, how? Do commenters believe it will promote competition among broker-dealers? Please provide data to support your arguments.

91. Do commenters believe that market orders and marketable limit orders should be combined in the quarterly retail order routing report? Would such combination be useful to customers? If so, how? Please explain and provide support, if possible.

92. Should the Commission require the same disclosures for retail orders that it is proposing to require for institutional orders? Why or why not? Would any or all of the disclosures proposed above for institutional orders be appropriate or useful for evaluating order routing of retail orders? If so, would the proposed disclosures need to be modified in any way to be applied to retail orders? Please explain.

93. Are the venues that are required to be included on retail order routing reports appropriate? Should the requirement cover more or fewer venues than are currently included (*i.e.*, the ten to which the largest number of non-directed orders were routed for execution and any to which five percent or more of non-directed orders were routed)?

2. Net Payment for Order Flow and Transaction Fees and Rebates by Specified Venue

Currently, Rule 606 requires that a broker-dealer's quarterly retail order routing report describe the material aspects of the broker-dealer's relationship with each Specified Venue, including a description of any arrangement for payment for order flow or profit-sharing relationship.[200] The current disclosure requirement is intended to signal to investors the potential conflicts of interest that may influence a broker-dealer's order routing decisions.[201] Generally, the description of any payment for order flow arrangement includes the material terms of the relationship, a description of the amounts per share or per order that the broker-dealer receives, and any transaction rebates.[202] Similarly, a broker-dealer that has entered into a profit-sharing relationship arrangement with a Specified Venue must disclose the extent to which it would share in profits derived from the execution of non-directed orders.[203]

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[195] *See supra* Section II.A.

[196] *See* Dolgopolov, *supra* note 55, at 234–235.

[197] *See* Battalio, Corwin, and Jennings Paper, *supra* note 57, at 3 (finding that fill rates for displayed limit orders are lower on exchanges with higher take fees).

[198] *See* proposed Rule 606(a)(1)(i)–(ii).

[199] *See* proposed Rule 600(b)(51).

[200] *See supra* notes 26 and 27 and accompanying text.

[201] *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75427 (stating that "[t]he purpose of requiring disclosure concerning the relationships between a broker-dealer and the venues to which

As noted above, financial inducements to attract order flow have become more varied and may be a substantial source of revenue.[204] A significant percentage of retail orders are routed to OTC market makers and most broker-dealers that handle retail orders either receive payment for order flow in connection with the routing of orders or are affiliated with an OTC market maker that executes the orders.[205] The Commission understands that financial inducements to attract order flow may create conflicts of interest between maximizing revenue and broker-dealers' duty of best execution to their customers.

While Rule 606 currently requires public reports on order routing percentages to Specified Venues and a discussion of the broker-dealer's relationship with each Specified Venue, it does not require detailed disclosure of payment for order flow received, payment from any profit-sharing relationship received, or access fees or transaction rebates. As a result, the Commission preliminarily believes that customers have not received as complete a picture of a broker-dealer's activities to fully evaluate its broker-dealer's management of any potential conflicts of interest and the quality of their broker-dealers' retail order routing practices. The Commission further preliminarily believes that providing such data for specific order types would further enhance a customer's ability to assess their broker-dealers' retail order routing practices.

As such, the Commission proposes to amend Rule 606(a)(1) to include new subparagraph (iii) to require that, for each Specified Venue, the broker-dealer must report the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following non-directed order types: (1) Market orders; (2) marketable limit orders; (3) non-marketable limit orders; and (4) other orders.[206]

The Commission preliminarily believes identifying specific payment information received for each category of order type by Specified Venue would provide customers with useful information to more completely evaluate their broker-dealers' services. Specifically, the Commission preliminarily believes that providing the aggregate amount of payments and fees received is important to give investors and others a comprehensive overview of their broker-dealer. Additionally, the Commission preliminarily believes that payments and fees received in total dollar amounts per share for each order type would allow customers to have a stronger grasp on a broker-dealer's motivation to route to a particular Specified Venue, the management of any potential conflicts of interest, and provide more insight into their retail order routing practices. The Commission preliminarily believes that the greater transparency achieved by such detailed information would be useful to retail customers when selecting or re-evaluating a broker-dealer.

The Commission requests comment on the proposed detailed disclosure of payments received and fees paid for market, marketable limit, non-marketable limit, and other order types at each Specified Venue. In particular, the Commission solicits comment on the following:

94. Do commenters believe that requiring broker-dealers to disclose, for each Specified Venue, payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received would enable customers placing retail orders to better assess their broker-dealers' management of potential conflicts of interest and quality of routing and execution services? Should the Commission require such information to be disclosed? Is there additional information that a customer could use to better assess their broker-dealer's conflicts of interest and quality of routing and execution services? Would requiring such disclosure affect broker-dealers' routing decisions? Please explain and provide support for your argument.

95. Do commenters believe that the proposal will permit customers placing retail orders to be able to better assess whether financial inducements impact their broker-dealer's order routing decisions for different types of orders and the execution quality of those orders? Why or why not?

96. Do commenters believe there are other specific categories of orders in addition to market orders, marketable limit orders, and non-marketable limit orders that should be included in the disclosure that would aid investors placing retail orders in assessing the quality of their order routing? Please provide support for your arguments.

97. Do commenters believe that broker-dealers should disclose the information required by proposed Rule 606(a)(1)(iii) for all orders, not just retail orders?

3. Discussion of Arrangement Terms With a Specified Venue

As noted above, Rule 606(a)(1)(iv) currently requires that a broker-dealer, in its quarterly Rule 606 report, provide a discussion of the material aspects of its relationship with a Specified Venue, including a description of any arrangement for payment for order flow and any profit-sharing relationship. In adopting the rule, the Commission stated that the description of a payment for order flow arrangement must include disclosure of the material aspects of the arrangement.[207] The Commission noted that material aspects of the arrangement should include a description of the terms of the arrangement, such as any amounts per share or per order that the broker-dealer receives.[208] While the Commission understands that certain terms, such as amounts per share or per order received, are important to a reasonable investor in evaluating a broker-dealer's routing practices, based

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it routes orders is to alert customers to potential conflicts of interest that may influence the broker-dealer's order routing practices").

[202] *See id.*

[203] *Id.*

[204] *See supra* notes 71–74 and accompanying text. *See also* Battalio, Corwin, and Jennings Paper, *supra* note 57, at 15–16 ("Nine of the brokers route at least a portion of their orders to market makers that offer payment for marketable orders . . . Charles Schwab, Morgan Stanley, Edward Jones, Just2Trade, and LowTrade route all non-directed market and limit orders to market makers that purchase order flow (although LowTrade and Just2Trade indicate that they do not accept payment for order flow, Edward Jones reports 'no material economic relationship' with the market makers, and Morgan Stanley reveals no payment for order flow)").

[205] *See id.* In a typical payment for order flow arrangement, a broker-dealer is paid for sending retail orders to another broker-dealer, which will in turn trade with the retail orders out of its own inventory or route the order to another venue for execution. The internalizing broker-dealer is able to capture small profits on these trades, and is thus able to pay for the order flow which generates this profit. Moreover, retail order flow is considered to be less informed about near-term price movements and therefore particularly attractive to internalizing broker-dealers. *See* Concept Release on Equity Market Structure, *supra* note 2, at 3612.

[206] *See* proposed Rule 606(a)(1)(iii).

[207] *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 75427.

[208] *See id.*

on market structure changes since the Rule 606 Predecessor Adopting Release, among other things, the Commission preliminarily believes that disclosure of any terms, written or oral, that may influence a broker-dealer's order routing decision would be useful for customers to assess the potential conflicts of interest facing broker-dealers when implementing their retail order routing decisions. Accordingly, the Commission preliminarily believes it should require broker-dealers to describe any terms, written or oral, of payment for order flow arrangements or profit-sharing relationships that may influence a broker-dealer's order routing decision in the discussion of a broker-dealer's relationship with a Specified Venue.

The Commission acknowledges that payment for order flow arrangements are intensively fact-based in nature and may vary across broker-dealers, nevertheless, the Commission preliminarily believes that disclosing the terms of such arrangements will provide more complete information for customers to better understand and evaluate a broker-dealer's retail order routing decision. In this regard, the Commission preliminarily believes that requiring broker-dealers to describe the terms of such arrangements with a Specified Venue that may influence their decision of where to route a retail order should serve to provide additional clarity to customers in evaluating a broker-dealer's retail order routing practices. The Commission preliminarily believes that the following are a non-exclusive list of terms of a payment for order flow arrangement or profit-sharing relationships that may influence a broker-dealer's order routing decision and would be required to be disclosed under the proposal: (1) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (2) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (3) volume-based tiered payment schedules; and (4) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.[209] The Commission preliminarily believes that these four types of terms reflect existing types of arrangements.

The Commission is proposing to require broker-dealers to disclose when a Specified Venue provides incentives for equaling or exceeding a volume threshold by offering additional payments or a higher rate of payment, or conversely, disincentives for failing to meet an agreed upon minimum retail order flow threshold, such as a lower payment or charging a fee. The Commission understands that such arrangements may vary among venues, as well as for each broker-dealer sending orders to those venues, and some venues provide higher rebates for meeting or exceeding order flow quotas or charge financial penalties for failing to meet order flow quotas. The Commission preliminarily believes that such incentives and disincentives influence a broker-dealer's decision to either meet or route additional retail order flow to exceed the threshold, and should be disclosed to inform customers of their broker-dealer's conflicts of interest.

Further, the Commission is proposing to require broker-dealers to disclose any volume-based tiered payment schedules with a Specified Venue. Venues that offer these payment schedules typically offer incrementally higher rebates or lower fees to broker-dealers for additional retail order flow volume. The Commission preliminarily believes that these payment schedules can encourage a broker-dealer to route additional retail order flow to such venue in an effort to reap a financial benefit and should be disclosed. Additionally, the Commission is proposing to require broker-dealers to disclose agreements regarding the minimum amount of retail order flow that a broker-dealer would be required to send to a Specified Venue. These types of agreements typically specify that a broker-dealer must send a minimum number of orders or shares to a venue during a particular time period. The Commission preliminarily believes that such commitments for retail order flow may present conflicts of interest and should be disclosed. Finally, the Commission acknowledges that as market structure evolves, new types of arrangements not specifically listed may come about. The four arrangements referenced in Rule 606(a)(1)(iv) are not an exhaustive list of terms of payment for order flow arrangements or profit-sharing relationships that may influence a broker-dealer's retail order routing decision that would be required to be disclosed under the proposed rule. The proposed rule would require disclosure of *any* term of such arrangements that may influence a broker-dealer's retail order routing decision.

As described above, because certain terms of payment for order flow arrangements or profit-sharing relationships may encourage broker-dealers to direct their orders to a specific venue in order to achieve an economic benefit or avoid an economic loss, potential conflicts of interest may arise. The Commission preliminarily believes that disclosure of such information would be useful for customers to assess the extent to which a broker-dealer's payment for order flow arrangements and profit-sharing relationships may potentially affect or distort the way in which retail orders are routed. The Commission further preliminarily believes that providing customers a comprehensive description of such quantifiable terms of a broker-dealer's relationship with a Specified Venue would allow them to fully appreciate the nature and extent of potential conflicts of interest facing their broker-dealers and assist them in evaluating the broker-dealers' management of such potential conflicts of interest.

The Commission requests comment on requiring broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their retail order routing decisions. In particular, the Commission solicits comment on the following:

98. Do commenters believe that disclosure of any terms of payment for order flow arrangements and profit-sharing relationships that may influence order routing decisions is relevant for retail customers to understand and evaluate a broker-dealer's routing practices and handling of potential conflicts of interest? If so, do commenters believe that the Commission should require a description of these terms to be disclosed in the retail order routing reports? Why or why not? Please explain. Would requiring such disclosure affect broker-dealers' routing decisions?

99. Do commenters believe that broker-dealers should disclose the information required by proposed Rule 606(a)(1)(iv) for all orders, not just retail orders?

100. Do commenters believe that the four enumerated examples in proposed Rule 606(a)(1)(iv) reflect the types of payment for order flow arrangements and other profit-sharing relationships currently in practice? If not, how should their descriptions be modified and what other types of arrangements, if any, should be specified in the rule text?

101. Do commenters believe that there are other identifiable factors, beyond the four included in the proposed rule, that may influence a broker-dealer's order routing decisions for retail orders? If yes, what are the factors and should the rule specify those factors?

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[209] *See* proposed Rule 606(a)(1)(iv).

102. Do commenters believe that incentives for equaling or exceeding an agreed upon order flow volume threshold influence a broker-dealer's order routing decision for retail orders? Why or why not? Please explain.

103. Do commenters believe that disincentives for failing to meet an agreed upon minimum order flow threshold influence a broker-dealer's order routing decision for retail orders? Why or why not? Please explain.

104. Do commenters believe that volume-based tiered payment schedules influence a broker-dealer's order routing decision for retail orders? Why or why not? Please explain.

105. Do commenters believe that agreements regarding the minimum amount of order flow that a broker-dealer would send to a venue influence a broker-dealer's order routing decision for retail orders? Why or why not? Please explain.

106. Do comments believe that both written and oral terms that may influence a broker-dealer's order routing decision should be required to be disclosed? Why or why not? Please explain.

4. Additional Amendments to Retail Disclosures

The Commission is further proposing amendments to remove the requirement that Rule 606(a)(1) report be divided into three separate sections for securities listed on the NYSE, securities that are qualified for inclusion in NASDAQ, and securities listed on the American Stock Exchange.[210] First, the Commission notes that the language is stale, as NASDAQ is currently a national securities exchange and the American Stock Exchange is now known as NYSE MKT LLC.[211] Second, the Commission preliminarily believes that segmenting retail order routing reports by primary listing market is no longer necessary or particularly useful to customers placing retail orders because the handling of NMS stocks no longer varies materially based on the primary listing market and the primary listing market often is not the dominant market for the trading of its listed securities.[212] As noted earlier, in 2000, when Rule 606 was adopted, the primary listing markets looked and operated very differently than they do today. For example, NYSE and the American Stock Exchange were primarily manual markets with limited electronic trading, while NASDAQ, not yet a national securities exchange, was a quote-driven dealer market. Today, with the adoption of Regulation NMS and the advances in technology, the primary listing markets are all dominated by electronic trading and the trading characteristics of securities listed on those markets may no longer warrant separating the routing report by primary listing market.[213] Accordingly, the Commission preliminarily believes that the division of reports by listing market is not particularly useful to retail customers interested in analyzing their broker-dealers' routing practices. While the Commission recognizes that eliminating the division of reports by the three distinct listing markets may potentially cause some reduction in informational content (as further discussed below), the Commission preliminarily believes that any diminution in granular listing market data is appropriate in light of the proposed new requirement to provide customers with pertinent retail order routing data that reflects today's multiple trading centers and practices.

The Commission is proposing that the public retail order routing reports required by Rule 606(a)(1) be broken down by calendar month.[214] Currently, Rule 606(a)(1) requires broker-dealers to make retail order routing reports publicly available for each calendar quarter, and such reports contain aggregate quarterly information on the routing of retail orders. As noted above, the Commission understands that trading centers frequently change their fee structures, including the amount of fees and rebates, in order to attract order flow, and such changes typically occur at the beginning of a calendar month. The changes in fee structures at trading centers may affect a broker-dealer's routing decisions. Disclosing retail order routing information on an aggregated quarterly basis can mask changes in routing behavior in response to changes in a trading center's fee structure. The Commission preliminarily believes that disclosing the information contained in the public retail order routing reports by calendar month would allow customers to better assess whether their broker-dealers' routing decisions are affected by changes in fee structures and the extent such changes affect execution quality. Accordingly, similar to the proposed rule to require institutional order handling reports to be broken down by calendar month,[215] the Commission is proposing to amend Rule 606(a)(1) to require that public retail order routing reports also be broken down by calendar month.[216]

In addition, the Commission is proposing that the public retail order routing reports required by Rule 606(a)(1) and customer-specific retail order routing report required by Rule 606(b)(1) be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site.[217] The Commission preliminarily believes that retail customers would have a similar interest as institutional customers in receiving the reports in a format that would allow them to use software applications to automatically recognize and process the information rather than having to manually enter the data to perform a comparison across broker-dealers. The Commission preliminarily believes that requiring both the public and customer-specific retail order routing reports to be provided in the proposed format should be useful to customers as it would allow them to more easily analyze and compare the data provided in both types of reports across broker-dealers, for the reasons discussed above.[218]

The Commission is also proposing to amend Rule 606(a)(1) to require every broker- dealer to keep the reports required pursuant to Rule 606(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. Similar to the identical requirement proposed for the public aggregated institutional order handling report under proposed Rule 606(c), the Commission preliminarily believes that making this historical data available to customers and the public generally will be useful to those seeking to analyze past routing behavior of broker-dealers. Should the proposal be adopted, the requirement to post and maintain reports on an Internet Web site that is free and readily accessible to the public would begin at that time and apply going forward. Affected entities would not be required to post past reports created prior to the proposed Rule's effectiveness, but such entities would be neither prevented nor discouraged from posting such reports.

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[210] *See* proposed Rule 606(a)(1).

[211] *See supra* note 76.

[212] For example, from February 2005 to February 2014, NYSE's market share in its listed securities declined from 78.9% to 20.1%. *See* Memorandum from the SEC Division of Trading and Markets to the SEC Market Structure Advisory Committee (April 30, 2015) ("Rule 611 Memo"), *available at http://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf.*

[213] *See* FIF Letter, *supra* note 77, at 3 (stating that order routing practices are no longer based on listing market).

[214] *See* proposed Rule 606(a)(1).

[215] *See supra* Sections III.A.3. and III.A.4.

[216] *See id.*

[217] *See* proposed Rule 606(a)(1).

[218] *See supra* Section III.A.3.

Finally, the Commission proposes to insert the term ''retail'' in the heading of Rule 606(a),[219] to state ''Quarterly report on *retail* order routing.'' The Commission preliminarily believes that such distinction between retail order routing information referred to in Rule 606(a) and institutional order handling information proposed in Rule 606(b) will help clarify the requirements of broker-dealers' reporting obligations under the Rules.

The Commission seeks comment on the proposed amendments to retail order routing disclosures. In particular, the Commission solicits comment on the following:

107. Do commenters believe that it continues to be useful for options to be included in disclosures for retail orders pursuant to Rule 606, in light of the fact that the proposal with respect to institutional orders would exclude options?

108. Should the Commission require retail order routing reports, both customer-specific and public, to be made available using an XML schema and associated PDF renderer? Why or why not?

109. Do commenters believe that broker-dealers should be required to provide the customer-specific and aggregated reports on retail order routing in the proposed format? Why or why not? Do commenters believe that it is useful to customers for broker-dealers to provide the reports in a structured XML format that would facilitate comparison of the data across broker-dealers? If not, why not? Should only the customer-specific report be provided in a structured XML format? Should only the aggregated report be provided in a structured XML format? Do commenters believe that it is useful to customers for broker-dealers to also provide the reports in an instantly readable PDF format? If not, why not? Are there other formats that would be more appropriate?

110. Do commenters believe that it is appropriate to remove the requirement to report retail order routing information by listing market (NYSE, NASDAQ, and the American Stock Exchange (n/k/a NYSE MKT LLC))? Why or why not?

111. Do commenters believe that the retail order routing report divided by the three listing markets continues to be relevant and useful to customers placing retail orders and/or analyzing their broker-dealer's routing practices? Why or why not?

112. Do commenters believe that alternative or additional criterion should be required in reports regarding retail order routing such as market capitalization or security type (*e.g.,* exchange-traded products or NMS stocks)? If so, please explain why should such criterion be used to report retail order routing information? Please provide data to support your arguments.

113. Do commenters believe that retail order routing information organized by stocks included in the S&P 500 Index and stocks not included in the S&P 500 Index versus by listing market or by NMS stocks would be useful to customers? Why or why not? Please explain.

114. Do commenters believe that it is reasonable and appropriate to require that the retail order routing reports be broken down by calendar month? Should the Commission require the retail order routing reports be produced on a different frequency than quarterly (*e.g.,* monthly)? Why or why not? What are the incremental burdens or benefits of providing reports at a different frequency? Please explain.

115. Do commenters believe that the Commission should require each retail order routing report be publicly available for a designated amount of time, as proposed? If so, is three years a reasonable amount of time that the reports should be available? Would a shorter or longer disclosure period be useful to investors and/or onerous to broker-dealers? Please explain.

116. Broker-dealers currently are required to make publicly available for each calendar quarter their quarterly reports on retail order routing and retain such reports for a period of not less than three years. Generally, broker-dealers will remove the previous quarterly report from their Web site and replace it with their most recent quarterly report. Since past quarterly reports are already required to be retained by broker-dealers, should the Commission require broker-dealers to make publicly available the prior three years' worth of quarterly reports from the effective date of the rule? Why or why not?

117. Should the Commission require all broker-dealers to make their public retail order routing reports available on one centralized Web site? For example, should all broker-dealer reports be available on the SEC's or an SRO's Web site? Why or why not?

5. Amendment to Rule 600(b)(18) To Rename ''Customer Order'' to ''Retail Order''

Finally, the Commission proposes to amend Rule 600(b)(18) to rename the defined term ''customer order'' to ''retail order,'' and to amend Rules 600(b)(19), 600(b)(23), 600(b)(48), 605, 606, and 607 to reflect such change. ''Customer order'' is currently defined in Rule 600(b)(18) to include smaller-sized orders in NMS securities.[220] As discussed above, the Commission is proposing to define institutional order to include larger-sized orders in NMS stocks.[221] Since ''retail'' generally connotes orders of a smaller size and ''institutional'' generally connotes orders of a larger size, the Commission preliminarily believes it is appropriate to rename ''customer order'' to ''retail order'' in connection with this proposed rulemaking. The Commission preliminarily believes that such change would clarify to market participants that the defined terms are based on the size of the order.

The Commission requests comment on the proposal to rename the defined term ''customer order'' to ''retail order.'' In particular, the Commission solicits comment on the following:

118. Do commenters believe that the proposed change is appropriate? Do commenters believe that such change would provide clarity to market participants? Are there alternative ways to distinguish small and large-sized orders? Please provide support for your arguments.

C. Amendment to Disclosure of Order Execution Information

The Commission is proposing to amend Rule 605(a)(2) to require market centers to keep reports required pursuant to Rule 605(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. Similar to the analogous requirements proposed in Rules 606(a) and 606(c) described above, the Commission preliminarily believes that making past order execution information available to customers and the public generally for a specified period of time will be beneficial to those seeking to analyze historical order execution information at various market centers. Should the proposal be adopted, the requirement to post and maintain reports on an Internet Web site that is free of charge and readily accessible to the public would begin at that time and apply going forward. Affected entities would not be required to post reports covering periods prior to the proposed Rule's effectiveness.

The Commission requests comment on the proposed amendments to the disclosure of order execution information. In particular, the Commission solicits comment on the following:

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[219] *See* proposed Rule 606(a).

[220] *See* 17 CFR 242.600(b)(18) and *supra* note 7 and accompanying text.

[221] *See* proposed Rule 600(b)(31) and *supra* Section III.A.1.

119. Do commenters believe that the monthly electronic reports required by Rule 605(a) should be publicly available for a designated amount of time? If so, is three years a reasonable amount of time that the reports should be available? Would a shorter or longer disclosure period be useful to investors placing institutional orders and/or onerous to broker-dealers? Please explain.

IV. Paperwork Reduction Act

Certain provisions of these proposed amendments contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[222] The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The current collection of information for Rule 606 entitled "Disclosure of order routing information" is being modified in a way that creates new collection of information burden estimates and modifies existing collection of information burden estimates. The existing collection of information for Rule 605 entitled "Disclosure of order execution information" is being modified in manner that does not alter the collection of information burden estimate. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

A. Summary of Collection of Information

The proposed amendments to Rule 606 would include a collection of information within the meaning of the PRA for broker-dealers who receive and route retail and institutional orders.

1. Customer Requests for Information on Institutional Orders

As detailed above, proposed Rule 606(b)(3) of Regulation NMS would require a broker-dealer, on request of a customer that places, directly or indirectly, an institutional order with the broker-dealer, to electronically disclose to such customer within seven business days of receiving the request, a report on the broker-dealer's handling of institutional orders for that customer for the prior six months, broken down by calendar month. Specifically, the report would contain certain information on the customer's order flow with the reporting broker-dealer as well as certain columns of information on institutional orders handled by the broker-dealer, as described below, categorized by venue and by order routing strategy category—passive, neutral, and aggressive—for each venue. The required columns of information include four groups of information: (1) Information on institutional order routing; (2) information on institutional order execution; (3) information on institutional orders that provided liquidity; and (4) information on institutional orders that removed liquidity.[223]

With regard to information about the customer's order flow with the reporting broker-dealer, the Commission is proposing to require disclosure of: (1) Total number of shares of institutional orders sent to the broker-dealer by the customer during the reporting period; (2) total number of shares executed by the broker-dealer as principal for its own account; (3) total number of institutional orders exposed by the broker-dealer through an actionable indication of interest; and (4) venue or venues to which institutional orders were exposed by the broker- dealer through an actionable indication of interest.[224]

With regard to information on institutional order routing, the Commission is proposing to require disclosure of: (1) Total shares routed; (2) total shares routed marked immediate or cancel; (3) total shares routed that were further routable; (4) average order size routed.[225]

With regard to information on institutional order execution, the Commission is proposing to require disclosure of: (1) Total shares executed; (2) fill rate; [226] (3) average fill size; [227] (4) average net execution fee or rebate; [228] (5) total number of shares executed at the midpoint; (6) percentage of shares executed at the midpoint; (7) total number of shares executed that were priced on the side of the spread more favorable to the institutional order; (8) percentage of total shares executed that were priced on the side of the spread more favorable to the institutional order; (9) total number of shares executed that were priced on the side of the spread less favorable to the institutional order; and (10) percentage of total shares executed that were priced on the side of the spread less favorable to the institutional order.[229]

With regard to information on institutional orders that provided liquidity, the Commission is proposing to require disclosure of: (1) Total number of shares executed of orders providing liquidity; (2) percentage of shares executed of orders providing liquidity; (3) average time between order entry and execution or cancellation for orders providing liquidity (in milliseconds); and (4) average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).[230]

Finally, with regard to information on institutional orders that removed liquidity, the Commission is proposing to require disclosure of: (1) Total number of shares executed of orders removing liquidity; (2) percentage of shares executed of orders removing liquidity; and (3) average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).[231]

2. Public Aggregated Report on Institutional Orders

Proposed Rule 606(c) of Regulation NMS would require a broker-dealer that receives institutional orders to make publicly available a report that aggregates the information required for customer-specific reports pursuant to proposed Rule 606(b)(3) for all institutional orders the broker-dealer receives, regardless of whether the information was requested by a customer and that such report would be broken down by calendar month. A broker-dealer would be required to make such report publicly available for each calendar quarter within one month after the end of the quarter. Broker-dealers would also be required to keep such reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

3. Requirement To Document Methodologies for Categorizing Institutional Order Routing Strategies

Proposed Rule 606(b)(3)(v) would require broker-dealers to provide the required information for each venue broken down and classified by the following order routing strategy category: (1) "Passive order routing strategy," which emphasize the minimization of price impact over the speed of execution of the entire institutional order; (2) "neutral order routing strategy," which are relatively neutral between the minimization of price impact and the speed of execution of the entire institutional order; and (3) "aggressive order routing strategy," which emphasize the speed of execution of the entire institutional order over the minimization of price impact. The proposed rule would require the broker-dealer to assign each order routing strategy that it uses for institutional orders to one of these three categories in a consistent manner for each report it prepares, promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments, and to document the specific methodologies it relies upon for making such assignments. The Commission is proposing to require every broker-dealer to preserve a copy of the methodologies used to assign its order routing strategies and maintain such copy as part of its books and records in a manner consistent with Rule 17a-4(b) under the Exchange Act.

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[222] 44 U.S.C. 3501 *et seq.*

[223] *See supra* Section III.A.4.

[224] *See* proposed Rule 606(b)(3).

[225] *See* proposed Rule 606(b)(3)(i)(A)–(D).

[226] Fill rate would be calculated by the shares executed divided by the shares routed.

[227] Average fill size would be the average size, by number of shares, of each order executed on the venue.

[228] The fee and rebate would be measured in cents per 100 shares.

[229] *See* proposed Rule 606(b)(3)(ii)(A)–(J).

[230] *See* proposed Rule 606(b)(3)(iii)(A)–(D).

[231] *See* proposed Rule 606(b)(3)(i)(A)–(C).

4. Amendment to Current Disclosures With Respect to Retail Orders

The proposed amendments to Rule 606(a) of Regulation NMS would: (1) Break down the existing limit order disclosure into separate categories of marketable limit orders and non-marketable limit orders; (2) require that for each Specified Venue, the broker-dealer must report the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following order types: (i) Market orders; (ii) marketable limit orders; (iii) non-marketable limit orders; and (iv) other orders; (3) require broker-dealers to describe specific aspects of any terms of payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence their order routing decisions, including: (i) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (ii) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (iii) volume-based tiered payment schedules; and (iv) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue; (4) require that such reports be broken down by calendar month; (5) require that such reports be kept posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site; and (6) remove the requirement that the Rule 606(a)(1) report be divided into three separate categories by listing market. Instead, the information required under Rule 606(a)(1) would be aggregated for all NMS stocks. The proposed amendments would require reports produced pursuant to Rules 606(a) and 606(b)(1) to be formatted in the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site.

5. Amendment to Current Disclosures Under Rule 605

The Commission is proposing to amend Rule 605(a)(2) to require market centers to keep reports required pursuant to the Rule 605(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

B. Proposed Use of Information

Generally, the order routing disclosures required under the proposed amendments to Rule 606 would provide detailed information to both institutional and retail customers that would enable them to evaluate how their orders were routed by their broker-dealers, assess conflicts of interest facing their broker-dealers in providing order routing services, and have the ability to engage in informed discussions with their broker-dealers about the broker-dealer's order routing practices. The proposed order routing disclosures could inform future decisions on whether to retain a broker-dealer's order routing services or engage the order routing services of a new broker-dealer. In addition, broker-dealers may use the public disclosures to compete on the basis of order routing services, and academics and others may use the public disclosures pursuant to Rules 605 and 606 to review and analyze broker-dealer routing practices and trading center order executions.

1. Customer Requests for Information on Institutional Orders

The order handling disclosures proposed under Rule 606(b)(3) would provide detailed order routing and execution information to a customer regarding its specific institutional orders during the reporting period. Generally, the five groups of information contained in the institutional order handling report would enable customers to understand where and how their institutional orders were routed or exposed as well as where their orders were executed during the reporting period. Customers could use the information contained in an institutional order handling report to assess any considerations a broker-dealer may have faced when routing its orders to various venues, whether those considerations may have affected how a broker-dealer routed its orders, and whether those considerations may have affected its execution equality.

Specifically, customers would be able to review each venue to which their institutional orders were routed and identify potential conflicts of interest, affiliations, or business arrangements between their broker-dealer and the venue and assess whether large volumes of orders or certain order types were directed to venues from which the broker-dealer may receive significant economic benefit. The information provided in the institutional order handling report could further be used by customers to assess whether a broker-dealer's order routing practices may have led to risks of information leakage. In addition, the information contained in the institutional order handling report would enable investors to assess, monitor, and generally determine the overall execution quality received from a broker-dealer. As noted above, customers could use the proposed order handling disclosures to inform future decisions on whether to retain a broker-dealer's order routing services or engage the order routing services of a new broker-dealer.

2. Public Aggregated Report on Institutional Orders

Proposed Rule 606(c) would require a broker-dealer that receives institutional orders to make publicly available a report that aggregates the information enumerated in proposed Rule 606(b)(3), even if not requested by a customer. The proposed public aggregated institutional order handling reports would enable customers to use a standardized set of information to compare how broker-dealers handle institutional orders and use such information in determining whether to retain the services of a broker-dealer or engage the services of a new broker-dealer. Broker-dealers could use the aggregated information to compare its order handling services against other broker-dealers, which could improve competition among broker-dealers on the basis of order routing and execution quality. In addition, academic researchers and others could use the public aggregated institutional order handling information for research and analysis. Further, third-party vendors offering analytical services may use the information in the public reports in an attempt to sell customized reporting tools and services.

3. Requirement to Document Methodologies for Categorizing Institutional Order Routing Strategies

Broker-dealers would assign order routing strategies into passive, neutral, and aggressive categories, applying consistent classification of their order routing strategies for purposes of producing customer-specific and public aggregated institutional order handling reports, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments. Regulators, including the Commission, could use the documented methodologies as a reference in determining whether a broker-dealer is consistently classifying and applying its order routing strategies for reporting purposes.

4. Amendment to Current Disclosures With Respect to Retail Orders

The proposed amendment to Rule 606(a) to break down the existing limit order disclosure in the retail order routing reports into separate categories of marketable limit orders and non-marketable limit orders could be used by customers to assess the differences in the ways broker-dealers route these specific order types. Customers could use the information contained in the retail order routing reports to assess potential conflicts of interest its broker-dealers face with respect to routing these distinct order types, particularly with respect to the economic incentives received from trading centers. Customers could use this information to determine whether to retain a broker-dealer's services or engage the services of a new broker-dealer, which could foster competition among broker-dealers on the basis of quality of order routing and execution. In addition, academic researchers and others could use this information for research and analysis.

The proposed requirement that a broker-dealer disclose the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount an on a per share basis, for specified non-directed order types for each Specified Venue could allow customers to determine how broker-dealers route different types of orders relative to any economic benefit or consequence to the broker-dealer. Customers could use this information to further assess whether their broker-dealers' routing decisions may be influenced by conflicts of interest. The requirement in proposed Rule 606(a)(1) that the quarterly reports be broken down by calendar month could allow customers to determine whether and how their broker-dealer's routing decisions changed in response to changing fee and rebate structures in the marketplace, which often change at the beginning of a calendar month. The proposed requirement that such reports be kept posted on an Internet Web site for three years could allow customers and others, such as researchers, to analyze historical routing behavior of particular broker-dealers. In addition, the proposed requirement for broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions, including information relating to specific incentives or volume minimums, could allow customers to understand how their broker-dealers route retail orders and whether and how such routing is influenced by payment for order flow and/or a profit-sharing relationship.

5. Amendment to Current Disclosures Under Rule 605

The requirement that reports required under Rule 605 be kept posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site could allow customers and others, such as researchers, to analyze historical order execution quality at various market centers. The three years of data could be useful to those seeking to analyze how execution quality has changed over time, in addition to changes in response to regulatory or other developments.

C. Respondents

The respondents to these proposed amendments would be broker-dealers that route retail or institutional orders and market centers that create reports pursuant to Rule 605. As of December 2015, the Commission estimates that there were approximately 4,156 total registered broker-dealers.[232] Of these, the Commission estimates 266 are broker-dealers that route retail orders.[233] The Commission estimates that 200 broker-dealers are involved in the practice of routing institutional orders, all of whom also route retail orders.[234] The Commission estimates that there are 380 market centers to which Rule 605 applies.[235] The Commission requests comment on the accuracy of these estimated figures.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Customer Requests for Information on Institutional Orders

a. Initial Reporting and Recordkeeping Burden

The Commission preliminarily believes that many broker-dealers that route institutional orders already create and retain the order handling information required by the proposed changes to Rule 606(b)(3). In such cases, the initial burden to comply with the requirement would be significantly lower than for a broker-dealer whose systems do not already create and retain the required information. In addition, the Commission preliminarily believes that many broker-dealers who do not have proprietary systems which create and retain order handling information use third-party service providers to allow them to create and retain the information required by the proposed changes to Rule 606(b)(3). For this reason, the Commission is providing two estimates below, one for broker-dealers that route institutional orders whose systems do not currently support creating and retaining the information required by Rule 606(b)(3) who will upgrade their systems either in-house or via a third-party service provider, and another for broker-dealers that route institutional orders whose systems currently do create and retain such information, including those that use a third-party service provider whose systems currently obtain such information.

The Commission preliminarily believes that most broker-dealers either have systems that currently obtain the information required by the proposed rule, or use third-party service providers who have systems that obtain such information. The Commission further preliminarily believes that all broker-dealers have systems in place that at least capture some of the information required by the proposed rule. Of the 200 broker-dealers involved in routing institutional orders, the Commission estimates that 25 broker-dealers that route institutional orders do not currently have systems that obtain all of the information required by the proposed amendments.[236] The Commission estimates that these 25 broker-dealers would be able to perform the required enhancements in-house, but could also use a third-party service provider. As discussed further below, the Commission further estimates that, after required systems enhancements were performed, all broker-dealers would capture the necessary information in-house, but some broker-dealers would create the required reports in-house, while other broker-dealers would engage third parties to create the reports.

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[232] The Commission is basing its estimate off data compiled from responses to Form BD.

[233] *See id.* The Commission estimates that both clearing brokers and introducing brokers route retail orders. The Commission notes that the term "retail order" refers to "customer order" defined in Rule 600 (b)(18) of Regulation NMS. *See supra* note 7 and accompanying text.

[234] *See id.* Using Form BD data, the Commission estimates that clearing brokers and some introducing brokers route institutional orders.

[235] The Commission derived this estimate based on the following: 236 OTC market makers (not including market makers claiming an exemption from the reporting requirements of the Rule), plus 12 exchanges, 1 securities association, 86 exchange market makers, and 45 ATSs.

Based on discussions with industry sources, the Commission estimates that the average one-time, initial burden for broker-dealers that route institutional orders that do not currently create and retain the proposed order handling information to program systems in-house to implement the requirements of the proposed amendments to Rule 606(b)(3) in-house would be 200 hours[237] per broker-dealer. The Commission estimates the average one-time, initial burden for broker-dealers that route institutional orders that do not currently create and retain the proposed order handling information to engage a third-party to program the broker-dealers' systems to implement the requirements of the proposed amendments to Rule 606(b)(3) to be 50 hours[238] and $35,000.[239] The Commission estimates that of the 25 broker-dealers that route institutional orders who do not currently have systems in place to capture the information required by the rule, 10 such broker-dealers will perform the necessary programming upgrades in-house, and 15 will engage a third-party to perform the programming upgrades. Additionally, of the 25 broker-dealers that route institutional orders who do not currently have systems in place to capture the information required by the proposed rule, the Commission estimates that 10 such broker-dealers will need to purchase hardware and software upgrades to fulfill the requirements of the proposed rule at an average cost of $15,000 per broker-dealer, and that the remaining 15 broker-dealers have adequate hardware and software to capture the information proposed by the rule. Therefore, the total initial burden for broker-dealers that route institutional orders who do not currently capture order handling information required by the proposed rule to program their systems to produce a report to comply with the proposed rule change is 2,750 hours[240] and $675,000.[241]

A broker-dealer that routes institutional orders whose systems already capture the data required by the proposed rule would need to format its systems to produce a report that complies with the proposed rule. The Commission estimates the average burden for a broker-dealer who already captures information required by the proposed rule to format its systems to produce a report to comply with the proposed rule would be 40 hours.[242] The Commission estimates that 125 broker-dealers would format systems to produce the reports in-house. A broker-dealer that routes institutional orders who uses a third-party service provider to produce reports using such order handling information would need to need to work with the vendor to ensure the proper data is captured in the reports. The Commission estimates 50 broker-dealers that route institutional orders would use a third-party vendor to ensure data required by the rule is captured in the reports. The Commission estimates the average burden for a broker-dealer who uses a third-party service provider to work with such service provider to ensure proper reports are produced would be 20 hours[243] and $5,000.[244] The Commission preliminarily believes that broker-dealers whose systems currently capture and retain information required by the rule would not need to purchase hardware or software upgrades. Thus, the total burden for broker-dealers who currently obtain the required data but need to format their systems, or work with their data provider, to prepare a report to comply with the proposed rule is 6,000 hours[245] and $250,000.[246]

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[236] This estimate was based on discussions with various industry participants.

[237] The Commission estimates the monetized burden for this requirement to be $60,420. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Sr. Programmer at $303 per hour for 100 hours) + (Sr. Database Administrator at $312 per hour for 40 hours) + (Sr. Business Analyst at $251 per hour for 40 hours) + (Attorney at $380 per hour for 20 hours) = 200 hours and $60,420. This burden hour estimate was based on discussions with various industry participants.

[238] The Commission estimates the monetized burden for this requirement to be $15,125. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Compliance Manager at $283 per hour for 20 hours) + (Sr. Business Analyst at $251 per hour for 15 hours) + (Attorney at $380 per hour for 15 hours) = 200 hours and $15,125. This burden hour estimate was based on discussions with various industry participants.

[239] The Commission estimates that, on average, a third-party service provider would charge $35,000 to perform the necessary work.

[240] 200 hours per broker-dealer who routes institutional orders who does not currently obtain data required by the proposed rule who will upgrade its own systems × 10 such broker-dealers + 50 hours per broker-dealer who will engage a third-party to perform the necessary systems upgrades × 15 such broker-dealers = 2,750 hours. The Commission estimates the total monetized burden for this requirement to be $831,075 (10 routing broker-dealers who will perform upgrades in-house × $60,420 = $604,200) + (15 broker-dealers who will engage a third-party × $15,125 = $226,875) = $831,075). *See supra* notes 237 and 238.

[241] ($35,000 per broker-dealer who will engage a third-party × 15 such broker-dealers) + ($15,000 per broker-dealer who will need to purchase hardware and software upgrades × 10 such broker-dealers) = $675.000. *See supra* note 239.

[242] The Commission estimates the monetized burden for this requirement to be $12,084. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Sr. Programmer at $303 per hour for 20 hours) + (Sr. Database Administrator at $312 per hour for 8 hours) + (Sr. Business Analyst at $251 per hour for 8 hours) + (Attorney at $380 per hour for 4 hours) = 40 hours and $12,084.

[243] The Commission estimates the monetized burden for this requirement to be $5,726. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Compliance Manager at $283 per hour for 14 hours) + (Sr. Business Analyst at $251 per hour for 4 hours) + (Attorney at $380 per hour for 2 hours) = 20 hours and $5,726.

[244] The Commission estimates a third-party service provider working with a broker-dealer whose systems currently capture and retain information required by the rule would, on average, charge $5,000 to program the systems to create a report that complies with the rule.

[245] 40 hours per broker-dealer who needs to format its systems to prepare a report × 125 broker-dealers who need to format their systems to prepare a report + 20 hours per broker-dealer who needs to work with a third-party vendor to ensure a proper report is produced x 50 broker-dealers who need to work with third-party vendors = 6,000 hours. The Commission estimates the monetized burden for this requirement to be $1,796,800 ($12,084 per broker-dealer who needs to format its systems to prepare a report × 125 such broker-dealers + $5,726 per broker-dealer who needs to work with a third-party vendor to ensure a proper report is produced × 50 such broker-dealers = $1,796,800). *See supra* notes 242 and 243.

[246] $5,000 per broker-dealer who works with a third-party vendor to ensure proper reports are

Therefore, the estimated total initial burden to comply with proposed Rule 606(b)(3) is 8,750 hours[247] and $925,000.[248]

The Commission requests comment regarding the accuracy of its estimate as to how many broker-dealers that route institutional orders are currently able to obtain the information required by the proposed rules and the estimated burden hours necessary to comply with the proposal.

b. Annual Reporting and Recordkeeping Burden

Proposed Rule 606(b)(3) requires broker-dealers to respond to individual customer requests for information on institutional orders. The Commission estimates that 135 of the 200 broker-dealers that route institutional orders would respond to proposed Rule 606(b)(3) requests in-house.[249] The Commission estimates that an average response to a Rule 606(b)(3) request for a broker-dealer who responds to such requests in-house will take approximately 2 hours per response.[250] The Commission estimates that an average broker-dealer will receive approximately 200 requests annually.[251] Therefore, on average, a broker-dealer who responds to 606(b)(3) requests in-house will incur an estimated annual burden of 400 hours to prepare, disseminate, and retain responses to customers required by Rule 606(b)(3).[252] With an estimated 135 broker-dealers who route institutional orders who will respond to 606(b)(3) requests in-house, the estimated total annual burden for such 135 broker-dealers to comply with the customer response requirement in proposed Rule 606(b)(3) is 54,000 hours.[253]

For the 65 broker-dealers that route institutional orders who are anticipated to use a third-party service provider to respond to requests pursuant to Rule 606(b)(3), the Commission estimates the burden to be 1 hour[254] and $100 per response.[255] With an estimated 200 requests pursuant to Rule 606(b)(3) per year, the Commission estimates that on average, the annual burden for a broker-dealer who uses a third-party service provider to respond to requests pursuant to Rule 606(b)(3) will be 200 hours[256] and $20,000. With an estimated 65 broker-dealers that route institutional orders who will respond to Rule 606(b)(3) requests using a third-party-service provider, the Commission estimates the total annual burden for such 65 broker-dealers will be 13,000 hours[257] and $1,300,000.[258]

Therefore, the total annual burden for all 200 broker-dealers that route institutional orders to comply with the customer response requirement in proposed Rule 606(b)(3) is estimated to be 67,000 hours[259] and $1,300,000.[260]

2. Public Aggregated Report on Institutional Orders

c. Initial Reporting and Recordkeeping Burden

Once a broker-dealer that routes institutional orders has systems in place to record and report the information required by proposed Rule 606(b)(3) to individual customers, the broker-dealer creating the quarterly public aggregated institutional order handling reports in-house will need to configure its systems to aggregate the information required by proposed Rule 606(c) or use a third-party service provider to create such reports. Once the systems to obtain such information are in place, the Commission estimates that broker-dealers or their third-party service providers would incur a modest additional burden or cost to format such data into an aggregated report. The Commission estimates that some broker-dealers will format these reports themselves in-house while others will use a third-party service provider to format the reports. The Commission estimates that a broker-dealer who routes institutional orders which formats and creates the required reports itself would incur an initial burden of 20 hours to comply with the quarterly reporting requirement of proposed Rule 606(c).[261] The Commission estimates

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produced × 50 such broker-dealers = $250,000. *See supra* note 244.

[247] 2,750 hours for broker-dealers who need to format their systems to obtain the information required by the proposed rule and prepare reports + 6,000 hours for broker-dealers who currently obtain such information and need to format their systems or work with their third-party vendor to prepare a report to comply with the rule = 8,750 hours. The Commission estimates the total monetized burden for this requirement to be $2,627,875 ($831,075 for broker-dealers who need to format their systems either on their own or by using a third-party to obtain the information required by the proposed rule + $1,796,800 for broker-dealers who currently obtain such information and need to format their systems or work with their third-party vendor to prepare a report to comply with the rule = $2,627,875). *See supra* notes 240 and 245.

[248] ($35,000 per broker-dealer who will engage a third-party × 15 such broker-dealers) + ($15,000 per broker-dealer who will need to purchase hardware and software upgrades × 10 such broker-dealers) + ($5,000 per broker-dealer who works with a third-party vendor to work with such vendor to ensure proper reports are produced × 50 such broker-dealers) = $975,000. *See supra* notes 241 and 246.

[249] The Commission estimates that the 125 broker-dealers estimated already to capture the information that would be required plus the 10 broker-dealers that would do systems work in-house who do not currently capture the information that would be required would respond to Rule 606(b)(3) requests in-house.

[250] Based on discussions with industry participants, the Commission estimates that each response will require a Jr. Business Analyst for 1 hour and a Programmer Analyst for 1 hour. Thus, the burden estimate is calculated as follows: Jr. Business Analyst at $160 per hour for 1 hour, and a Programmer Analyst at $220 per hour for 1 hour, for a total burden of 2 hours and $380 per report. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*.

[251] This estimate was based on discussions with various industry participants.

[252] 2 hours per request × 200 annual requests = 400 hours. The Commission estimates the total monetized burden for this requirement to be $76,000 annually (200 annual requests × $380 per request = $76,000). *See supra* note 250.

[253] 400 hours annually per broker-dealer that routes institutional orders who will respond to requests in-house × 135 such broker-dealers = 54,000 hours. The Commission estimates the total monetized burden for this requirement to be $10,260,000 ($76,000 per broker-dealer that routes institutional orders that will respond to requests in-house × 135 such broker-dealers = $10,260,000). *See id.*

[254] The Commission estimates the monetized burden for this requirement to be $283. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 1 hour = $283.

[255] The Commission estimates a third-party service provider would charge on average $100 to respond to requests pursuant to the rule.

[256] 1 hour per broker-dealer who will use a third-party service provider per request × 200 requests annually = 200 hours. The Commission estimates the monetized burden for this requirement to be $56,600 (200 annual requests × $283 per request = $56,600). *See supra* note 254.

[257] 200 hours annual per broker-dealer who will use a third-party service provider × 65 such broker-dealers = 13,000 hours. The Commission estimates the monetized burden for this requirement to be $3,679,000 ($56,600 annually per broker-dealer who will use a third-party service provider × 65 such broker-dealers = $3,679,000). *See id.*

[258] $100 per request × 200 requests annually × 65 broker-dealers who will use a third-party service provider = $1,300,000. *See supra* note 255.

[259] 400 hours annually per broker-dealer that routes institutional orders who will respond to requests in-house × 135 such broker-dealers + 200 hours annually per broker-dealer who routes institutional orders who will use a third-party to respond to requests × 65 such broker-dealers = 67,000 hours. The Commission estimates the total monetized burden for this requirement to be $13,939,000 ($10,260,000 for broker-dealers that route institutional orders who will respond to requests in-house + $3,679,000 for broker-dealers that route institutional orders who will use a third-party service provider to respond to requests = $13,939,000). *See supra* notes 253 and 257.

[260] *See supra* note 258.

[261] The Commission estimates the monetized burden for this requirement to be $4,990. The Commission derived this estimate based on per hour figures from SIFMA's *Management &*

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that a broker-dealer who uses a third-party service provide to create the necessary reports would incur an initial burden of 5 hours [262] and $2,500.[263] The Commission estimates that consistent with the estimates above about reports pursuant to proposed Rule 606(b)(3), 135 broker-dealers who route institutional orders will create the required reports themselves while 65 broker-dealers will use a third-party service provider to create the required reports. Therefore, the estimated total initial burden for broker-dealers that route institutional orders to produce the quarterly report is 3,025 hours [264] and $162,500.[265]

d. Annual Reporting and Recordkeeping Burden

The Commission estimates that each broker-dealer that routes institutional orders who prepares its reports in-house will incur an average burden of 10 hours [266] to prepare and make publicly available a quarterly report in the format required by proposed Rule 606(c), or a burden of 40 hours per year.[267] Once a report is posted on an internet Web site, the Commission does not estimate that there would be an additional burden to allow the report to remain posted for the period of time specified in the rule. With an estimated 135 broker-dealers that route institutional orders that will prepare their own reports, the total burden per year to comply with the quarterly reporting requirement in proposed Rule 606(c) is estimated to be 5,400 hours.[268]

The Commission estimates that each broker-dealer that routes institutional orders that uses a third-party service provider to prepare the report will incur an average burden of 2 hours [269] and $500 [270] to prepare and make publicly available a quarterly report in the format required by proposed Rule 606(c), or a burden of 8 hours [271] and $2,000 per year.[272] Once a report is posted on an internet Web site, the Commission does not estimate that there would be an additional burden to allow the report to remain posted for the period of time specified in the rule. With an estimated 65 broker-dealers that route institutional orders that will use a third-party service provider to prepare their reports, the total burden per year to comply with the quarterly reporting requirement in proposed Rule 606(c) is estimated to be 520 hours [273] and $130,000.[274]

Therefore, the total annual burden for all 200 broker-dealers who route institutional orders to comply with the quarterly reporting requirement in proposed Rule 606(c) is estimated to be 5,920 hours [275] and $130,000.[276]

3. Requirement To Document Methodologies for Categorizing Institutional Order Routing Strategies

a. Initial Reporting and Recordkeeping Burden

The Commission estimates that broker-dealers that route institutional orders already have descriptions for their order routing strategies (or employ third-party vendors who have descriptions for such strategies) and will need to assign each order routing strategy for institutional orders to comply with the passive, neutral, and aggressive categories. Thus, the Commission estimates that the one-time, initial burden for a broker-dealer that routes institutional orders to assign its own current strategies and establish and document its specific methodologies for assigning order routing strategies as required by Rule 606(b)(3)(v) to be 40 hours.[277] The Commission estimates that, consistent with its estimates above, 135 broker-dealers that route institutional orders would do this in-house. With an estimated 135 broker-dealers who will assign their strategies and establish and document its specific methodologies for assigning institutional order routing strategies as passive, neutral, and aggressive in-house, the total initial burden for such broker-dealers is estimated to be 5,400 hours.[278]

Professional Earnings in the Securities Industry 2013: Programmer at $248 per hour for 10 hours + Sr. Business Analyst at $251 per hour for 10 hours = 20 hours and $4,990.

[262] The Commission estimates the monetized burden for this requirement to be $1,415. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 5 hours = $1,415.

[263] The Commission estimates a third-party service provider would charge on average $2,500 to format a broker-dealer's data to produce a report to comply with the rule.

[264] 20 hours per broker-dealer that routes institutional orders who will create the required reports itself × 135 such broker-dealers + 5 hours per broker-dealer that routes institutional orders who uses a third-party service provider to create the required reports itself × 65 such broker-dealers = 3,025 hours. The Commission estimates the total monetized burden for this requirement to be $765,625 ($4,990 per broker-dealer that routes institutional orders × 135 such broker-dealers + $1,415 per broker-dealer who uses a third-party service provider to create the required reports × 65 such broker-dealers = $765,625). *See supra* notes 261 and 262.

[265] $2,500 per broker-dealer who uses a third-party service provider to create the required reports × 65 such broker-dealers = $162,500. *See supra* note 263.

[266] The monetized cost for this burden requirement was derived as follows: (Jr. Business Analyst at $160 per hour for 10 hours = $1,600). The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013.*

[267] 10 hours per broker-dealer that routes institutional orders per quarter × 4 quarters = 40 hours per broker-dealer that routes institutional orders. The Commission estimates the total monetized burden for this requirement to be $6,400 ($1,600 per broker-dealer that routes institutional orders per quarter × 4 quarters = $6,400). *See id.*

[268] 40 hours annually per broker-dealer that routes institutional orders × 135 broker-dealers that route institutional orders = 5,400 hours. The Commission estimates the total monetized burden for this requirement to be $864,000 ($6,400 annually per broker-dealer that routes institutional orders × 135 such broker-dealers = $864,000). *See id.*

[269] The Commission estimates the monetized burden for this requirement to be $443. The monetized cost for this burden requirement was derived as follows: (Jr. Business Analyst at $160 per hour for 1 hour + Compliance Manager at $283 per hour for 1 hour = $443). The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013.*

[270] The Commission estimates a third-party service provider would charge on average $500 to prepare a report required by the rule.

[271] 2 hours per broker-dealer that routes institutional orders per quarter who uses a third-party servicer provider × 4 quarters = 8 hours per such broker-dealer. The Commission estimates the total monetized burden for this requirement to be $1,772 ($443 per broker-dealer that routes institutional orders who uses a third-party servicer provider per quarter × 4 quarters = $1,772). *See supra* note 269.

[272] $500 per report × 4 reports per year = $2,000. *See supra* note 270.

[273] 8 hours annually per broker-dealer that routes institutional orders who will use a third-party servicer provider to prepare its reports × 65 such broker-dealers = 520 hours. The Commission estimates the total monetized burden for this requirement to be $115,180 ($1,772 annually per broker-dealer that routes institutional orders × 65 such broker-dealers = $115,180).

[274] $2000 per broker-dealer who will use a third-party service provider to prepare its reports × 65 such broker-dealers = $130,000.

[275] 40 hours per broker-dealer that routes institutional orders who will create the required reports × 135 such broker-dealers + 8 hours per broker-dealer that routes institutional orders who will use a third-party service provider to create the required reports itself × 65 such broker-dealers = 5,920 hours. The Commission estimates the total monetized burden for this requirement to be $979,180 ($6,400 per broker-dealer that will create the reports itself × 135 such broker-dealers + $1,772 per broker-dealer who uses a third-party service provider to create the required reports × 65 such broker-dealers = $979,180). *See supra* notes 267 and 271.

[276] *See supra* notes 274.

[277] The Commission estimates the monetized burden for this requirement to be $12,620. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Sr. Business Analyst at $251 per hour for 20 hours + Attorney at $380 per hour for 20 hours = 40 hours and $12,620. This burden hour estimate was based on discussions with various industry participants.

[278] 40 hours per broker-dealer that routes institutional orders × 135 such broker-dealers = 5,400 hours. The Commission estimates the total monetized burden for this requirement to be $1,703,700 ($12,620 per broker-dealer that routes institutional orders × 135 such broker-dealers = $1,703,700). *See id.*

The Commission estimates that the one-time, initial burden for the 65 broker-dealers that route institutional orders who will work with a third-party service provider to assign each order routing strategy for institutional orders into passive, neutral, and aggressive categories and establish and document its specific methodologies for assigning order routing strategies as required by Rule 606(b)(3)(v) to be 10 hours[279] and $5,000.[280] With an estimated 65 broker-dealers that route institutional orders who will work with a third-party service provider, the total initial burden for such broker-dealers to assign their current routing strategies for institutional orders into passive, neutral, and aggressive strategies is estimated to be 650 hours[281] and $325,000.[282]

Therefore, the total initial burden for all 200 broker-dealers who route institutional orders to comply with the requirement to document the methodologies for categorizing order routing strategies in proposed Rule 606(b)(3)(v) is estimated to be 6,050 hours[283] and $325,000.[284]

b. Annual Reporting and Recordkeeping Burden

Once established, broker-dealers that route institutional orders would be required to maintain the documentation of their order routing strategies. After a broker-dealer's strategies are initially assigned to one of the three categories in a consistent manner, the broker-dealer would be required to promptly update such assignments any time an existing strategy is amended or a new strategy is created that would change such assignment. The Commission estimates that the annual burden for a broker-dealer who will perform the work in-house to assign the descriptions of order routing strategies and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments to comply with Rule 606(b)(3)(v) will be 15 hours.[285] With an estimated 135 broker-dealers who route institutional orders who will maintain and assign their own descriptions, the total annual burden for such broker-dealers to assign the routing strategies for their institutional orders into passive, neutral, and aggressive strategies is estimated to be 2,025 hours.[286]

The Commission estimates that the annual burden for a broker-dealer who routes institutional orders who engages a third-party service provider to comply with Rule 606(b)(3)(v) will be 5 hours[287] and $1,000.[288] With an estimated 65 broker-dealers who route institutional orders who will engage a third-party to assign each order routing strategy for institutional orders into one of these three categories, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments, the total annual burden for such broker-dealers to work with a third-party service provider to assign the routing strategies for their institutional orders into passive, neutral, and aggressive strategies is estimated to be 325 hours[289] and $65,000.[290]

Therefore, the total annual burden for all 200 broker-dealers who route institutional orders to comply with the requirement to document the methodologies for categorizing order routing strategies and maintain the documentation of such methodologies in proposed Rule 606(b)(3)(v) is estimated to be 2,350 hours[291] and $65,000.[292]

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[279] The Commission estimates the monetized burden for this requirement to be $2,896. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 4 hours + Sr. Business Analyst at $251 per hour for 4 hours + Attorney at $380 per hour for 2 hours = 10 hours and $2,896. This burden hour estimate was based on discussions with various industry participants.

[280] The Commission estimates a third-party service provider would charge on average $5,000 to assign into one of the three categories the current strategies a broker-dealer uses and establish and document the specific methodologies for assigning order routing strategies as required by Rule 606(b)(3)(v).

[281] 10 hours per broker-dealer that routes institutional orders who will engage a third-party service provider to assign into one of the three categories its routing strategies and document such categorizations × 65 such broker-dealers = 650 hours. The Commission estimates the total monetized burden for this requirement to be $188,2400 ($2,896 per broker-dealer that routes institutional orders × 65 such broker-dealers = $188,240). *See supra* note 279.

[282] $5,000 per broker-dealer who will use a third-party service provider to assign into one of the three categories its routing strategies and document the methodologies for making such assignments × 65 such broker-dealers = $325,000. *See supra* note 280.

[283] 5,400 hours for broker-dealers who will assign each order routing strategy into one of the three categories and document methodologies for assigning such order routing strategies in-house plus 650 hours for broker-dealers who will use a third-party service provider to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments = 6,050 hours. The Commission estimates the monetized burden for this requirement to be $1,891,940 ($1,703,700 for broker-dealers who will assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments in-house plus $188,240 for broker-dealers who will use a third-party service provider to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments = $1,891,940). *See supra* notes 278 and 281.

[284] *See supra* note 282.

[285] The Commission estimates the monetized burden for this requirement to be $3,500. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Jr. Business Analyst at $160 per hour for 10 hours + Attorney at $380 per hour for 5 hours = 15 hours and $3,500. This burden hour estimate was based on discussions with various industry participants.

[286] 15 hours per broker-dealer that routes institutional orders who will assign and maintain their own descriptions × 135 such broker-dealers = 2,025 hours. The Commission estimates the total monetized burden for this requirement to be $472,500 ($3,500 per broker-dealer that routes institutional orders × 135 such broker-dealers = $472,500). *See id.*

[287] The Commission estimates the monetized burden for this requirement to be $1,609. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 3 hours + Attorney at $380 per hour for 2 hours = 5 hours and $1,609. This burden hour estimate was based on discussions with various industry participants.

[288] The Commission estimates a third-party service provider would charge $1,000 annually to maintain and keep current strategy categorizations strategies documentation of specific methodologies for assigning order routing strategies as required by Rule 606(b)(3)(v).

[289] 5 hours per broker-dealer that routes institutional orders who will engage a third-party to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments × 65 such broker-dealers = 325 hours. The Commission estimates the total monetized burden for this requirement to be $104,585 ($1,609 per broker-dealer that routes institutional orders who will engage a third-party to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments × 65 such broker-dealers = $104,585). *See supra* note 287.

[290] $1,000 per broker-dealer who will use a third-party service provider to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments × 65 such broker-dealers = $65,000.

4. Amendment to Current Disclosures With Respect to Retail Orders

a. Initial Reporting and Recordkeeping Burden

Any broker-dealer that routes retail orders is subject to the collection of information in Rule 606(a) and the proposed amendments thereto. The Commission notes that there are differences among the estimated 266 broker-dealers that are subject to retail order routing disclosure requirements.[293] Introducing firms typically rely primarily on clearing brokers to handle their customer accounts, and the collection of information burden would not apply to introducing brokers unless they are directly involved in determining where their customer orders are routed.[294] The Commission estimates that there are currently 185 clearing brokers that route retail orders. In addition to the 185 clearing brokers, there are approximately 81 introducing brokers that receive (but do not hold) funds or securities from their customers.[295] Generally, introducing brokers rely on clearing brokers to clear and execute trades and handle customer funds and securities.[296] However, the Commission preliminarily believes that some introducing brokers which receive funds or securities for customers may be involved in initiating orders or initially routing orders on behalf of their customers and may therefore have involvement in determining where retail orders are routed for execution. Because such introducing brokers may have involvement in determining where orders are routed, they have been included, along with clearing brokers, in estimating the total burden of the proposed amendments for institutional routing disclosure. The Commission preliminarily believes that the estimates should be the same for a clearing broker or an introducing broker that routes retail orders. Therefore, the Commission estimates that there are 266 broker-dealers to which the proposed requirements would apply.[297]

Rule 606(a)(1) currently requires that broker-dealers make publicly available quarterly reports on retail order routing. While the proposed rule does not alter this requirement; it does modify the content of the report. As noted above, broker-dealers will be required to account for the proportion of non-directed marketable limit and non-marketable limit orders as a percentage of total retail orders as well as the percentage of such orders broken down by Specified Venue. In addition, for each Specified Venue, broker-dealers would be required to provide information about net payment for order flow received per share, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received per share and in the aggregate broken down by order type. The proposed rule would require that such reports be broken down by calendar month. The proposed rule also eliminates a requirement that the order routing information contained in the customer reports be broken down by listing market, which simplifies presentation of information required under the rule.

To comply with the proposed requirements, broker-dealers who do not have systems that currently obtain information required by the rule will have to alter their current systems to obtain, record, and retain the information required by the proposed changes. The Commission preliminarily believes that broker-dealers would not encounter capital expenditures to comply with this requirement. The Commission estimates that most broker-dealers that route retail orders already obtain the information required by the proposed rule and that 50 broker-dealers do not currently obtain such information.[298] The Commission estimates that 25 of these 50 broker-dealers would update their systems in-house, while 25 would use third-party service providers.

The Commission estimates that the initial burden for a broker-dealer that routes retail orders whose systems do not currently capture all of the information required by the rule to update its systems to capture the information required by proposed Rule 606(a) and format that information into a report to comply with the rule will be 80 hours.[299] Therefore, the Commission estimates the total initial burden for the 25 broker-dealers who the Commission estimates do not currently capture information required by the proposed rule that perform the necessary system updates in-house will be 2,000 hours.[300]

The Commission estimates that the initial burden for a broker-dealer that routes retail orders to engage a third-party to program the necessary system updates to comply with proposed Rule 606(a) will be 20 hours[301] and $10,000.[302] Therefore, the Commission estimates the total initial burden for the 25 broker-dealers who the Commission estimates do not currently capture information required by the proposed rule who will engage a third-party service provider to perform the necessary system updates will be 500 hours[303] and $250,000. The Commission notes that this estimate contemplates the impact of making the reports available using the most recent versions of the XML schema and the associated PDF renderer, as published on the Commission's Web site, as required by both proposed Rule 606(a) and 606(b)(1). Therefore, the total initial burden estimate for all 50 broker-dealers who the Commission estimates will need to update their systems and create a new report is 2,500 hours[304] and $250,000.[305]

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[291] 2,025 hours for broker-dealers who will assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments in-house plus 325 hours for broker-dealers who will use a third-party service provider to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments = 2,350 hours. The Commission estimates the monetized burden for this requirement to be $577,085 ($472,500 for broker-dealers who will assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments in-house plus $104,585 for broker-dealers who will use a third-party service provider to assign into one of the three categories its routing strategies, document the methodologies for making such assignments, and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments = $577,085). *See supra* notes 286 and 291.

[292] *See supra* note 290.

[293] The Commission has previously noted the differences between these types of broker-dealers. *See, e.g.,* Rule 606 Predecessor Proposing Release *supra* note 15, at 48427.

[294] *See* Securities Exchange Act Release No. 40122 (June 24, 1998), 63 FR 35508 (June 30, 1998).

[295] This estimate is based on December 2015 Form Custody data received by the Commission.

[296] *See* Rule 606 Predecessor Proposing Release, *supra* note 15 at 48427.

[297] 185 clearing brokers + 81 introducing brokers that receive funds or securities from customers = 266 broker-dealers that route retail orders.

[298] The Commission estimates that most broker-dealers currently obtain such information. At the time of routing, for instance, a broker-dealer should know what type an order is, (*i.e.,* market or limit), whether the order is directed or not, and, if the order is a limit order, whether the limit order is marketable or not. Additionally, a broker-dealer should know after execution what types of fees or rebates were received, both on a per share basis and in the aggregate.

[299] The Commission estimates the monetized burden for this requirement to be $22,648. The Commission derived this cost estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Sr. Programmer at $303 per hour for 40 hours) + (Sr. Database Administrator at $312 per hour for 16 hours) + (Sr. Business Analyst at $251 per hour for 16 hours) + (Attorney at $380 per hour for 4 hours) = 80 hours and $22,648.

[300] 80 hours per broker-dealer that routes retail orders who will perform necessary system updates in-house × 25 such-broker-dealers = 2,000 hours. The Commission estimates the total monetized burden for this requirement to be $566,200 ($22,648 per broker-dealer that routes institutional orders × 25 such broker-dealers = $566,200). *See id.*

[301] The Commission estimates the monetized burden for this requirement to be $5,985. The Commission derived this cost estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 10 hours + Sr. Business Analyst at $251 per hour for 5 hours + Attorney at $380 per hour for 5 hours = 20 hours and $5,985.

[302] The Commission estimates that a third-party service provider would charge an average of $10,000 to upgrade a broker-dealer's systems to comply with proposed Rule 606(a).

For the remaining 216 broker-dealers whom the Commission estimates currently capture the data required by the proposed modifications to Rule 606(a), such broker-dealers would need to only format their reports to incorporate such data. The Commission estimates that 108 of such broker-dealers currently engage a third-party service provider to provide reports pursuant to existing Rule 606(a) and such broker-dealers would continue to use third-party service providers to format reports to comply with proposed Rule 606(a), as described further below. The Commission estimates that the remaining 108 broker-dealers who already capture information required by the proposed rule would prepare and format a report to comply with the proposed rule in-house. The Commission estimates for a broker-dealer who already captures such data, the burden to format that data into its existing reports on its own would be 20 hours.[306] Therefore, the total initial burden for broker-dealers to format already captured data into a report in-house to comply with proposed Rule 606(a) is estimated to be 2,160 hours.[307]

The Commission estimates the initial burden for the 108 broker-dealers who engage a third-party service provider to format reports to comply with proposed Rule 606(a) would be 8 hours[308] and $2,000.[309] Therefore, for the 108 broker-dealers the Commission estimates route retail orders who will engage a third-party to format and prepare a report that would comply with the proposed rule, the estimated total initial burden to comply with proposed Rule 606(a) is 864 hours[310] and $216,000.[311] Thus, the total estimate for the 216 broker-dealers for whom the Commission estimates currently capture the data required by proposed Rule 606(a) to format their reports to incorporate such data is 3,024 hours[312] and $216,000.[313] The Commission notes that these estimate include the impact of making the reports available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site, as required by both proposed Rule 606(a) and 606(b)(1).

Therefore, the Commission estimates that the total initial burden to comply with the proposed modifications to Rule 606(a) for all 266 broker-dealers which the Commission estimates route retail orders is 5,524 hours[314] and $466,000.[315]

Finally, the Commission proposes to amend Rule 606(a)(1)(iv)[316] to require broker-dealers to describe specific aspects of any terms of payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence their order routing decisions, including information relating to specific incentives or volume minimums.[317] The Commission estimates that the initial burden for a broker-dealer that routes retail orders to review, assess, and disclose its payment for order flow arrangements and profit-sharing relationships would be 10 hours[318] and that all 266 broker-dealers who route retail orders would describe such agreements and arrangements themselves. Therefore, the total initial burden for all broker-dealers who route retail orders to review, assess, and disclose its payment for order flow arrangements and profit-sharing relationships is estimated to be 2,660 hours.[319]

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[303] 20 hours per broker-dealer that routes retail orders who will engage a third-party service provider to perform necessary system updates × 25 such-broker-dealers = 500 hours. The Commission estimates the total monetized burden for this requirement to be $149,625 ($5,985 per broker-dealer that routes institutional orders × 25 such broker-dealers = $149,625). *See supra* note 301.

[304] 2,000 hours for a broker-dealer that routes retail orders whose systems do not currently capture the required information who will perform upgrades + 500 hours for a broker-dealer who routes retail orders whose systems do not currently capture the required information who will engage a third-party to perform the necessary upgrades = 2,500 hours. The Commission estimates the total monetized burden for this requirement to be $715,825 ($566,200 for broker-dealers that route retail orders whose systems do not currently capture the required information who will perform necessary upgrades in-house + $149,625 for broker-dealers that route retail orders whose systems do not currently capture the required information who will engage a third-party service provider to perform the system updates × 25 such broker-dealers) = $715,825. *See supra* notes 300 and 303.

[305] $10,000 per broker-dealer who will engage a third-party to perform necessary updates x 25 such broker-dealers = $250,000.

[306] The Commission estimates the monetized burden for this requirement to be $4,975. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Programmer at $248 per hour for 15 hours + Sr. Business Analyst at $251 per hour for 5 hours = 20 hours and $4,975.

[307] 20 hours per broker-dealer who will format reports in-house × 108 such broker-dealers = 2,160 hours. The Commission estimates the monetized burden for this requirement to be $537,300 ($4,975 per broker-dealer who will format reports in-house × 108 such broker-dealers). *See id.*

[308] The Commission estimates the monetized burden for this requirement to be $2,555. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* Compliance Manager at $283 per hour for 5 hours + Attorney at $380 per hour for 3 hours = 8 hours and $2,555. This burden hour estimate was based on discussions with various industry participants.

[309] The Commission estimates a third-party service provider would charge on average $2,000 to format already captured data into a report that would comply with proposed Rule 606(a).

[310] 8 hours per broker-dealer who will perform the necessary system updates in-house × 108 such broker-dealers = 864 hours. The Commission estimates the monetized burden for this requirement to be $275,940 ($2,555 per broker-dealer who will perform the system updates in-house 108 such broker-dealers). *See supra* note 308.

[311] $2,000 per broker-dealer who will use a third-party service provider to format data and prepare a report × 108 such broker-dealers = $216,000. *See supra* note 309.

[312] 2,160 hours for broker-dealers who currently capture the information required by proposed Rule 606(a) and will format their systems to create reports to comply with the proposed rule in-house + 864 hours for broker-dealers who currently capture such information who will hire a third-party service provider to format their systems to comply with the proposed rule = 3,024 hours. The Commission estimates the total monetized burden for this requirement to be $813,240 ($537,500 for broker-dealers who currently capture the information required by proposed Rule 606(a) and will format their systems to create reports to comply with the proposed rule in-house + $275,940 for broker-dealers who currently capture such information who will hire a third-party service provider to format their systems to comply with the proposed rule = $813,240). *See supra* notes 307 and 310.

[313] *See supra* note 311.

[314] 2,500 hours for broker-dealers who need to update their systems and prepare a report + 3,124 hours for broker-dealers who currently capture the information required by proposed Rule 606(a) and need to format their systems to create reports to comply with the proposed rule = 5,524 hours. The Commission estimates the total monetized burden for this requirement to be $1,529,065 ($715,850 for broker-dealers who need to update their systems and prepare a report + $813,240 for broker-dealers who currently capture the information required by proposed Rule 606(a) and need to format their systems to create reports to comply with the proposed rule = $1,529,065). *See supra* notes 304 and 312.

[315] $250,000 for broker-dealers who will engage a third-party to perform necessary upgrades + $216,000 for broker-dealers who will engage a third-party to format reports to comply with the proposed rule = $466,000. *See supra* notes 305 and 311.

[316] Renumbered from Rule 606(a)(1)(iii).

[317] *See* proposed Rule 606(a)(1)(iv).

b. Annual Reporting and Recordkeeping Burden

Rule 606(a) currently requires brokers-dealers that route retail orders to make available reports on the routing of all non-directed orders. The proposed changes to Rule 606(a)(1) will: (1) Eliminate the requirement that such reports be divided based on primary listing market and instead aggregate all NMS stocks into a single section; (2) add requirements that the reports contain information relating to the routing of marketable and non-marketable orders, as well as average payment for order flow for different types of orders; (3) require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions; and (4) require that such reports be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site.[320] The proposed amendments do alter the information currently collected under an existing collection of information requirement. The Commission preliminarily believes that once the initial burdens, described above, have been incurred to allow the broker-dealer to obtain the required information, the ongoing burden to produce a quarterly report would remain the same. However, broker-dealers would need to monitor payment for order flow and profit-sharing relationships and potential SRO rule changes that could impact their order routing decisions and incorporate any new information into their reports. Thus, the Commission estimates the average annual burden for a broker-dealer to comply with the proposed amendments to Rule 606(a)(1)(i)–(iii) would be 10 hours.[321] Thus, the total annual burden for all broker-dealers to comply with the proposed amendments is estimated to be 2,660 hours.[322]

Proposed Rule 606(a)(1)(iv) would require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions. Current Rule 606(a)(1)(iii), being renumbered as proposed Rule 606(a)(iv), requires broker-dealers to provide a discussion of the material aspects of the broker-dealer's relationship with each Specified Venue, including a description of any arrangement for payment for order flow and any profit-sharing relationship. Therefore, the proposed changes would require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions, in addition to the material aspects of the broker-dealer's relationship with each Specified Venue. Additionally, the costs noted in this section include the impact of posting the required reports in the specified format to an internet Web site. Once a report is posted on an internet Web site, the Commission estimates that there would not be an additional burden to allow the report to remain posted for the period of time specified in the rule. The Commission estimates that the average annual burden for a broker-dealer that handles retail orders to describe and update any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions to be 15 hours.[323] With 266 broker-dealers involved in retail order routing practices that would be required to comply with the rule, the Commission estimates the total annual burden for complying with proposed Rule 606(a)(1)(iv) to be 3,990 hours.[324]

5. Amendment to Current Disclosures Under Rule 605

Currently, Rule 605 requires market centers make available standardized, monthly reports of statistical information concerning their order executions. Further, the Rule requires that such reports be in electronic form and be made available for downloading from an Internet Web site that is free and readily accessible to the public. The proposed amendment to Rule 605 would require that such reports be kept posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. Because reports are already posted to an internet Web site pursuant to current Rule 605, the Commission estimates the proposed amendment to Rule 605 would not impose an additional burden. The proposed amendment prescribes a minimum period of time for which such reports that are already required to be posted on an Internet Web site shall remain posted.

E. Collection of Information Is Mandatory

All of the collection of information would be mandatory.

F. Confidentiality of Responses to Collection of Information

To the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.[325] Any information required to be disclosed publicly by the proposed Rules would not be confidential.

The quarterly order routing reports prepared and disseminated by broker-dealers pursuant to Rules 606(a) and 606(c), as proposed, would be available to the public. The individual responses by broker-dealers to customer requests for order routing information required by Rules 606(b)(1) and (b)(3), as proposed, would be made available the customer. The Commission, SROs, and other regulatory authorities could obtain copies of these reports as appropriate.

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[318] The Commission estimates the monetized burden for this requirement to be $3,155. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Sr. Business Analyst at $251 per hour for 5 hours) + (Attorney at $380 per hour for 5 hours) = 10 hours and $3,155.

[319] 10 hours per broker-dealer that routes retail orders x 266 such broker-dealers = 2,660 hours. The Commission estimates the total monetized burden for this requirement to be $839,230 ($3,155 per broker-dealer that routes retail orders × 266 such broker-dealers = $839,230). *See id.*

[320] *See supra* Section III.B.

[321] The Commission estimates the monetized burden for this requirement to be $3,155. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Sr. Business Analyst at $251 per hour for 5 hours) + (Attorney at $380 per hour for 5 hours) = 10 hours and $3,155.

[322] 10 hours per broker-dealer that routes retail orders x 266 such broker-dealers = 2,660 hours. The Commission estimates the total monetized burden for this requirement to be $839,230 ($3,155 per broker-dealer that routes retail orders x 266 such broker-dealers = $839,230). *See id.*

[323] The Commission estimates the monetized burden for this requirement to be $3,500. The Commission derived this estimate based on per hour figures from SIFMA's *Management & Professional Earnings in the Securities Industry 2013:* (Jr. Business Analyst at $160 per hour for 10 hours) + (Attorney at $380 per hour for 5 hours) = 15 hours and $3,500.

[324] 15 hours annually per broker-dealer that routes retail orders x 266 such broker-dealers = 3,990 hours. The Commission estimates the total monetized burden for this requirement to be $931,000 ($3,500 annually per broker-dealer that routes retail orders × 266 such broker-dealers = $931,000). *See id.*

[325] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

G. Retention Period for Recordkeeping Requirements

Pursuant to proposed Rule 606(a), broker-dealers shall be required to keep quarterly retail order routing reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

For Rule 606(b), broker-dealers shall be required to preserve all communications required under these proposed amendments pursuant to Rule 17a–4, as applicable.[326] For the categorization of order routing strategies pursuant to proposed Rule 606(b)(3)(v), broker-dealers shall be required to preserve such records in a manner consistent with Rule 17a–4(b), specifically for a period of not less than three years, the first two years in an easily accessible place.

Pursuant to proposed Rule 606(c), broker-dealers shall be required to keep public aggregated institutional order handling reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

Pursuant to the proposed amendments to Rule 605, market centers shall be required to keep order execution reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

120. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

121. Evaluate the accuracy of our estimates of the burden of the proposed collection of information;

122. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

123. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File Number S7–14–16. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–14–16 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from the proposed amendments to Rules 600, 605, and 606.[327] These costs and benefits are discussed below and have informed the policy choices described throughout this release.

A. Introduction

Among the primary economic considerations for the proposed amendments to Rule 600, Rule 605, and Rule 606 are transparency for customers placing institutional orders, enhanced transparency for customers placing retail orders, and enhanced access to order handling reports.

The Commission proposes to amend Rule 600 to include a definition of "institutional order" and to amend Rule 606 to require broker-dealers to (1) disclose standardized customer-specific institutional order handling information to their customers, including the use of actionable IOIs in executing institutional orders and (2) make publicly available for each calendar quarter a report that aggregates the information required for customer-specific institutional order handling reports for all institutional orders they receive.

In short, and as discussed earlier, the Commission preliminarily believes that standardizing customer-specific institutional order handling disclosures, as would be required by proposed Rule 606(b)(3), would provide information to customers to enable them to: (1) Assess the potential for information leakage with the routing of their orders; (2) assess the conflicts of interest that may influence the broker-dealer's order handling practices; and (3) compare institutional order handling practices across multiple broker-dealers. The Commission also preliminarily believes that requiring broker-dealers to disclose their use of actionable IOIs in executing institutional orders will be useful to customers assessing broker-dealers' order handling decisions, particularly in regards to analyzing information leakage.

In addition, the Commission preliminarily believes that public disclosure by each broker-dealer of aggregated information about its institutional order handling, as would be required by proposed Rule 606(c), would, among other things, (1) assist market participants, including customers, in comparing the order handling services of all broker-dealers; (2) facilitate customers' ability to make informed decisions when engaging a broker-dealer's services; (3) provide academics and other members of the public with access to additional data for conducting research on institutional order routing and market execution quality; (4) allow broker-dealers to better compare their own services against other broker-dealers; and (5) permit trading centers to better compare their execution statistics against other trading centers.

The Commission preliminarily believes that the customer-specific as well as the public aggregated institutional order handling reports may further incentivize broker-dealers to provide customers with higher-quality routing services when executing their institutional orders, thereby mitigating the potential for information leakage, and better manage any potential conflicts of interest the broker-dealers may face. The Commission also preliminarily believes that the reports will promote competition among broker-dealers to capture customers' order flow, and among trading centers for order execution.

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[326] 17 CFR 240.17a–4. Registered brokers and dealers are already subject to existing recordkeeping and retention requirements under Rule 17a–4.

[327] The Commission also considered the proposed amendments to Rule 607 and preliminarily believes that there are no costs and benefits associated with those proposed amendments. The proposed amendments to Rule 607 replace "customer order" with "retail order" to be consistent with the proposed amendments to Rule 600(b)(19). However, since the definition in proposed Rule 600(b)(19) remains unchanged, there are no cost and benefits to the proposed amendments to Rule 607. The Commission is also proposing to amend Rule 3a51–1(a) under the Exchange Act; Rule 13h–1(a)(5) of Regulation 13D–G; Rule 105(b)(1) of Regulation M; Rules 201(a) and 204(g) of Regulation SHO; Rules 600(b), 602(a)(5), 607(a)(1), and 611(c) of Regulation NMS; and Rule 1000 of Regulation SCI, to update cross-references as a result of today's proposal, which would not result in costs or benefits.

With respect to retail orders, the Commission proposes to amend Rule 606(a)(1) to include new subparagraph (iii) to require that, for each Specified Venue, the broker-dealer must report the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following non-directed order types: (1) Market orders; (2) marketable limit orders; (3) non-marketable limit orders; and (4) other orders.[328] In addition, proposed amendments to Rule 606(a)(1)(iv) would require disclosure of a description of any terms of payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence a broker-dealer's order routing decisions, including, but not limited to: (1) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (2) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (3) volume-based tiered payment schedules; and (4) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue. The Commission preliminarily believes that these amendments will enhance transparency on the routing of retail orders and enhance competition among broker-dealers that route retail orders, to the benefit of investors.

In addition, the Commission preliminarily believes that the proposed amendments would allow customers to better assess the retail order routing and execution quality offered by their broker-dealers. As a result, the Commission preliminarily believes that these additional disclosures may provide broker-dealers further incentives to improve execution quality for their customers and better manage any potential for conflicts of interest the broker-dealers may face. In addition, the ability of customers to better assess routing and execution quality could also lead to increased competition among broker-dealers with respect to execution quality, which could, in turn, result in broker-dealers providing even higher-quality retail order routing and execution services.

The Commission is further proposing to require that all reports on institutional order handling and retail order routing be provided in a consistent, structured format. The Commission preliminarily believes that requiring the reports be provided in this format would be useful to customers as it would allow them to more easily analyze and compare data across broker-dealers.

Finally, the Commission is proposing to amend Rules 605 and 606 of Regulation NMS to require that the public order execution and order routing reports be kept publicly available for a period of three years. The Commission preliminarily believes that this would allow the public to more efficiently evaluate the services of broker-dealers because it would be easier for the public to access historic reports and analyze the data over an extended time period. For example, at a minimum, the public would have access to three years of historic data and may choose to download the reports periodically to analyze data over a time period of more than three years.

The discussion below presents an overview of the current practices with regards to the reporting and disclosure of order routing and execution quality for institutional as well as retail orders, a consideration of the costs and benefits of the proposed new reporting requirements for institutional orders and of the proposed amendments to the reporting requirements for retail orders, and a discussion of the potential effects of the proposed amendments to Rule 606 on efficiency, competition, and capital formation. This discussion will also describe the Commission's proposal to amend Rule 605 by requiring market centers to keep public execution reports posted on an Internet Web site that is accessible to the public for a period of three years.

B. Baseline

The baseline for considering the economic impact of amending Rule 606 to require reporting for institutional orders consists of: (1) Information that customers currently receive from their broker-dealers regarding how their institutional orders are handled; (2) the format in which such information is currently provided to customers; (3) conflicts of interest broker-dealers currently face; (4) the current use of actionable IOIs; and (5) the ability to assess order routing and execution quality currently provided by different broker-dealers and execution quality currently provided by different trading centers.

The baseline for considering the economic impact of amending Rule 606 for retail orders and of amending Rule 605 consists of: (1) Information that customers currently receive under current Rules 605 and 606 or information that customers currently receive from their broker-dealers that is not required by current Rules 605 and 606; (2) the format in which information required by current Rule 606 for retail orders is provided to customers; (3) conflicts of interest broker-dealers currently face; (4) how long reports required by current Rules 605 and 606 are available to the public; and (5) the ability to assess order routing and execution quality currently provided by different broker-dealers and execution quality currently provided by different trading centers.

Further, the baseline for considering the economic impact of amending Rule 606 for institutional and retail orders and Rule 605 comprises the current competitive landscape in the markets for brokerage services and for execution services and any current limitations on efficiency or capital formation relevant to the proposed amendments. These various baseline factors are discussed in further detail below.

1. Ad Hoc Reports for Institutional Orders

Currently, broker-dealers may voluntarily provide some information on routing and execution quality of institutional orders to individual customers in response to requests by these customers. Customers may also use third-party vendors for TCA (*e.g.*, to analyze the execution prices of orders compared to various benchmarks). However, the Commission understands that TCA provided by third-party vendors generally does not encompass an analysis of routing decisions because the third-party vendors, similar to customers, do not have access to the order handling information necessary to do so. Therefore, the completeness of any analysis of institutional orders, including TCA, is affected by a lack of specific order handling information with regard to the various venues to which institutional orders are routed. In addition, while TCA provided by third-party vendors may focus on measuring and comparing execution quality of orders, TCA does so typically at the parent order or broker-dealer level, and generally not at the trading center level, because the third-party vendors, again, do not have access to the information about institutional order handling that would be necessary to do so.

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[328] *See* proposed Rule 606(a)(1)(iii).

The Commission further understands that reports that institutional customers currently receive upon request from their broker-dealers may not provide the consistent and standardized information needed to fully assess the performance of their broker-dealers. In particular, the Commission understands that these reports are not prepared or presented in a uniform manner that allows for easy comparison of institutional order handling across different broker-dealers, and there is no uniformity in the current disclosure of execution fees charged or rebates paid by the trading centers to the broker-dealers. The reports contain what the broker-dealers provide upon the requests of customers or what the customers specifically request from the broker-dealers. As a result, a broker-dealer will often supply reports containing different information to different customers, and more importantly, a customer may receive reports containing different information from different broker-dealers. Further, even if the reports contain the same data elements, those data elements may not be computed in the same way or use the same terminology across different broker-dealers or over time for the same broker-dealer. These differences make it more difficult for institutional customers to compare broker-dealers or to examine one broker-dealer's performance over time. In addition, as these reports are not standardized and vary by broker-dealer or by customer, the Commission understands that some of these reports group order routing strategies by their aggressiveness,[329] while other reports do not.

Even if a broker-dealer voluntarily provides information about institutional orders upon request, it may not do so with respect to all customers. Whether a given customer receives a report and how responsive the report is to the request likely depends on the customer's current or potential business relationship with the broker-dealer. A broker-dealer may be more accommodating towards customers that send, or may send in the near future, substantial order flow. To the extent that some customers receive reports from broker-dealers while other customers do not or that some customers receive higher-quality reports than other customers, the playing field may not be level with respect to institutional order handling information.

Moreover, the public currently does not have access to information on the performance of broker-dealers relating to institutional orders. Under current Rule 606, a broker-dealer is not required to provide public reports for orders having a market value of $200,000 or more. While an institutional customer can request ad-hoc reports from broker-dealers about the handling of its orders, the lack of public reports relating to institutional orders makes it infeasible for an institutional customer to compare handling of institutional orders by broker-dealers that the customer does not have a business relationship with. For the broker-dealers that the customer does send orders to, the customer is not able to compare these broker-dealers more generally based on all orders those broker-dealers handle rather than only the orders the customer sends to the broker-dealers.[330] Institutional customers and the public may use public reports for retail orders required under current Rule 606 to evaluate broker-dealers, with the effectiveness of that approach being dependent upon how good a proxy the order routing for retail orders is for the order routing for institutional orders. The Commission understands that some customers use the reports for retail orders required by current Rule 606 to predict, among other things, the execution quality of institutional orders.

2. Publication Period for Reports on Retail Orders Required by Current Rules 605 and 606

Currently, Rule 605 does not specify the minimum length of time that market centers need to post publicly the order execution reports and Rule 606 does not specify a minimum length of time that broker-dealers need to post publicly the order routing reports. The Commission understands that generally, when reports are posted, market centers and broker-dealers will remove the previous report from their Web site and replace it with their most recent report,[331] though some may make reports available for a longer period of time that varies.[332] The Commission understands that this may make it difficult for the public to analyze historical data. For example, the public must download the data regularly to have access to historical data. Alternatively, the public may rely on third-party vendors who retrieve and aggregate Rule 605 and 606 reports from market centers and broker-dealers, respectively, to get access to historical data.

3. Available Information on Conflicts of Interest

Current Rule 606 requires for retail orders, among other things, a description of any arrangement for payment for order flow[333] and any profit-sharing relationships. The current required disclosure is designed to set forth arrangements, including financial relationships, that could lead to conflicts of interest for a broker-dealer when routing retail orders.[334] Broker-dealers have a variety of choices for order routing and execution, and the venue that a broker-dealer chooses may have a tangible effect on the execution quality of an order. Broker-dealers face conflicts of interest when routing orders, such as affiliations with trading centers, receipt of payment for order flow or receipt of payment from any profit-sharing relationship, and liquidity rebates. For example, recent research analyzed the relation between maker-taker fee schedules and order routing. According to this study, four out of ten national brokerage firms appear to consistently route limit orders to the exchange(s) paying the highest rebate for those limit orders. In this research, an analysis of proprietary limit order data and trades from NYSE's trade and quote ("TAQ") data showed strong empirical evidence of a negative relation between take fees and limit order execution quality.[335] The Commission preliminarily believes that such financial incentives have the potential to affect how broker-dealers route retail orders; however, these conflicts of interest might not only affect retail orders.

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[329] This grouping could be similar to the grouping into aggressive, neutral, and passive as proposed in Rule 606(b)(3).

[330] Currently, a customer placing institutional orders can only compare broker-dealers based on the orders it had sent to the broker-dealers because only those are contained in the ad-hoc reports the broker-dealers provide upon request, but cannot compare how the broker-dealers handle the orders it had sent compared to all of the institutional orders the broker-dealers had received. In addition, the ad-hoc reports provided by the broker-dealers upon request by a customer placing institutional orders may be provided in different formats and contain different and potentially inconsistent information, which makes the comparison of the order routing decisions and execution quality of broker-dealers more difficult and less useful.

[331] *See, e.g.,* Morgan Stanley Rules 605 and 606 Disclosures, *available at http://www.morganstanley.com/institutional-sales/sec_rules_605_606*; Wells Fargo Legal Disclosures, *available at https://www.wellsfargoadvisors.com/disclosures/legal-disclosures.htm*; Charles Schwab Order Routing, *available at http://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html*; TD Ameritrade Disclosures, *available at https://www.tdameritrade.com/disclosure.page*; Fidelity Quarterly Reports, *available at https://capitalmarkets.fidelity.com/app/item/RD_13569_21696.html.*

[332] *See, e.g.,* UBS Order Routing Disclosure, *available at https://www.ubs.com/us/en/wealth/misc/orderroutingdisclosure.html.*

[333] In addition, Rule 10b-10 under the Exchange Act requires broker-dealers, when acting as agent for the customer, to disclose on the confirmation of a transaction whether payment for order flow was received and, upon written request of the customer, to furnish the source and nature of the compensation received. *See* 17 CFR 240.10b-10(a)(2)(i)(C). Accordingly, Rule 10b-10 provides disclosure to a specific customer of whether payment for order flow was received on a particular transaction while Rule 606 provides public disclosure of any arrangement for payment for order flow and any profit-sharing relationship by requiring a description of such arrangements.

[334] 17 CFR 242.606(a)(1)(iii). *See* Rule 606 Predecessor Adopting Release, *supra* note 15, at 48417 (stating that "[t]he purpose of requiring disclosure of any relationships between a broker-dealer and the venues to which it routes orders is to alert customers to potential conflicts of interest that may influence the broker-dealer's order-routing practices.").

Under the quarterly disclosure obligations in current Rule 606(a), a broker-dealer is required to discuss the material aspects of the broker-dealer's relationship with each Specified Venue (which is determined based on retail order routing), including a description of any arrangement for payment for order flow, but broker-dealers are not required to provide information on the net amount of payment for order flow per share or by order type nor payment received for any profit-sharing relationship. Further, current Rule 606(a) does not require broker-dealers to disclose rebates received and access fees paid per share or by order type nor does it require a description of the terms of a payment for order flow arrangement or profit-sharing relationship that may influence a broker-dealer's order routing decision. The current information required by Rule 606(a) can be used by customers to assess order routing and execution services of broker-dealers as well as the potential conflicts of interest faced by broker-dealers in providing such services and determine whether to retain the services of broker-dealers or to discontinue the use of such services. In addition, broker-dealers could use the current information required by Rule 606(a) as a means to evaluate and enhance their order routing and execution services, compare their order routing and execution services to that of other firms, and use such comparisons in selling their services to customers.

Moreover, current Rule 606(a) does not specify a minimum length of time that reports must be made available from broker-dealers. As a result, customers placing retail orders may not be able to compare the order routing decisions of a broker-dealer through time, if past quarterly reports are not available. Instead, customers may need to rely on third-party vendors to provide and/or analyze past quarterly reports.

As noted above, conflicts of interest may affect institutional orders in ways similar to effects on retail orders. The ad hoc nature of the current order handling disclosures of institutional orders is not conducive to providing institutions with information they can use efficiently to assess conflicts of interest. In particular, a broker-dealer for which conflicts of interest influence routing decisions may have the incentive to obscure the conflicts of interest in the ad hoc reports.

4. Available Information on Execution Quality for Institutional and Retail Orders

The Commission preliminarily believes that broker-dealers are incentivized to provide their customers with information about the quality of services they offer as they may lose business if their competitors provide reports and they do not. However, as described above, under current rules, broker-dealers are not required to provide customers standardized reports about the handling of their institutional orders and instead customers may receive ad-hoc reports from broker-dealers upon request. Additionally, a broker-dealer may have an incentive to structure its reports and provide data in a way that is advantageous to the broker-dealer. Specifically, broker-dealers may want to design the ad hoc reports to highlight areas where the broker-dealer believes it compares well to others and obscure areas where the broker-dealer may not compare well or where customers are likely to have concerns. Separately, there are no public reports about the handling of institutional orders for independent research and analysis, by academic researchers, the public at large, or third-party vendors. Due to the limitations noted above, the Commission preliminarily believes that customers may not be able to compare the institutional order handling performance of broker-dealers reliably and as a result, broker-dealers may have less incentive to compete on the quality of their institutional order handling, which may result in broker-dealer routing practices that are suboptimal for customers, *e.g.,* practices that do not avoid excessive information leakage or that may not provide the execution quality desired by the customer.

For customers placing retail orders, current Rule 606 requires quarterly public reports on retail order routing and disclosure of retail order routing information upon request, but the reports do not require information on payment for order flow received, payment from any profit-sharing relationship received, or transaction rebates and access fees, and they are not required to separate limit orders into marketable and non-marketable limit orders. As a result, it may be difficult for customers to use the information provided in the reports to evaluate the quality of their broker-dealers' retail order routing. Customers may therefore not be well informed as to how their broker-dealers manage any potential conflicts of interest they may face. The Commission preliminarily believes providing payment for order flow data in the quarterly public reports, broken down by calendar month, separately for marketable and non-marketable limit orders would create an opportunity for more detailed analysis.[336]

As noted above, the current information on retail order routing required by Rule 606(a) may spur competition between broker-dealers on the basis of order routing services and execution quality.[337] Customers may use the information required by Rule 606(a) to evaluate and retain the services of a broker-dealer or to discontinue the use of such services. In addition, broker-dealers may use the current information required by Rule 606(a) as a means to: (1) Evaluate and enhance their order routing and execution services; (2) compare their order routing and execution services to that of other firms; and (3) use such comparison in selling their services to customers.

5. Format of Current Reports for Institutional and Retail Orders

As discussed above, broker-dealers currently may provide some information on routing and execution quality of institutional orders to individual customers in response to requests by these customers. The Commission understands that broker-dealers provide these reports in a variety of formats and a given broker-dealer may use different formats for different customers and/or may modify their formats over time. The formats of these reports vary from unstructured to structured formats, such as unstructured text and PDF files to structured XML files. The Commission is soliciting comment on whether broker-dealers currently provide their reports in a structured or unstructured format, and which format the broker-dealers use for these reports. For those broker-dealers that provide their reports in a structured format, the Commission is further soliciting comment on how prevalent or useful the selected structured format is.

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[335] *See* Battalio, Corwin, and Jennings Paper, *supra* note 57. The authors "document a strong negative relation between take fees and several measures of limit order execution quality. Based on this evidence, [they] conclude that the decision of some national brokerages to route all nonmarketable limit orders to a single exchange paying the highest rebate is not consistent with the broker's responsibility to obtain best execution for customers." *See id.*

[336] *See* Battalio, Corwin, and Jennings Paper, *supra* note 57.

[337] *See supra* Section III.B.

Under current Rule 606(a), broker-dealers are required to provide public quarterly reports on retail order routing. The current Rule 606(a) does not specify a format for these reports. The Commission understands that broker-dealers currently provide these reports on a Web site or downloadable as a PDF file. The reports typically are presented as tables with one line for each listing exchange for NMS stocks and exchange-listed options, where each row represents metrics for a particular routing venue, but they are not in a structured format.

6. Quality of Broker-Dealer Routing Practices for Institutional Orders

The Commission does not have data to gauge the current level of quality of broker-dealer routing practices for institutional orders, as current Rule 606 only covers retail orders and not institutional orders.[338] As noted, customers of broker-dealers can and do request ad-hoc reports about the handling of their orders and broker-dealers may voluntarily provide such reports. Customers can use those reports to evaluate their broker-dealers' routing practices. This, in turn, may give broker-dealers additional incentives to provide high execution quality to their customers. However, as discussed, there are limitations to the current situation, namely, the ad-hoc reports are not standardized across broker-dealers and there are no public reports that would allow customers to evaluate all broker-dealers, independent of whether they place orders with them or not.

7. Use of Actionable IOIs in Institutional Orders

Some broker-dealers use actionable IOIs to communicate to external liquidity providers to send an order to the broker-dealer in response to liquidity at the broker-dealer, generally a customer's institutional order. As noted above, because actionable IOIs convey similar information as an order, a response to an actionable IOI may result in an execution at the venue of the IOI sender. Accordingly, a broker-dealer's use of actionable IOIs creates potential information leakage similar to the routing of orders. The Commission does not have data to gauge the current level of use of actionable IOIs by broker-dealers to attract orders to execute against institutional orders represented by such actionable IOIs. In addition, current Rule 606 for retail orders does not require the inclusion of actionable IOIs in the reports.

8. Competition, Efficiency, and Capital Formation

The proposed amendments are likely to affect competition among broker-dealers that route institutional and retail orders. These broker-dealers compete in a segment of the market for broker-dealer services. The market for broker-dealer services is highly competitive, with most business concentrated among a small set of large broker-dealers and thousands of small broker-dealers competing for niche or regional segments of the market.[339] To limit costs and make business more viable, small broker-dealers often contract with larger broker-dealers or service bureaus to handle certain functions, such as clearing and execution, or to update their technology.[340] Larger broker-dealers typically enjoy economies of scale over small broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and their customers.[341] Among other services, broker-dealers provide execution and strategy services, distribute shares from initial public offerings, and provide analyst research on securities. Brokerage commissions typically are charged for a broker-dealer's premium services, and represent an average, not marginal, cost of trading.[342]

As discussed in Section IV.C., as of December 2015, there were approximately 4,156 registered broker-dealers.[343] Of these, the Commission preliminarily estimates that 266 route retail orders.[344] The Commission preliminarily estimates that 200 broker-dealers route institutional orders, all of whom also route retail orders, and that each broker-dealer who routes institutional orders will receive an average of 200 requests for reports pursuant to proposed Rule 606(b)(3) annually.[345] All of these broker-dealers compete for business from retail and institutional customers. The Commission also preliminarily estimates that there are approximately 5,594 customers that may place institutional orders.[346]

Among other factors, broker-dealers may compete for retail and institutional customers by trying to offer them better terms for trading, such as better execution quality. The emergence of discount brokerages has encouraged full-service brokers to compete on price and led to the unbundling of research from execution services.[347] In addition, the fragmentation of NMS stock trading into 12 registered exchanges, more than 40 ATSs, and over 200 OTC market makers [348] has contributed to the need for broker-dealers to focus on venue selection in executing orders. Broker-dealers may also innovate to attract new customers by, for example, offering access to algorithms designed to match trading or investment objectives. However, as noted above, the information on which broker-dealers offer better terms of trade may be non-standardized, presented inconsistently over time, or may employ complex calculations using undisclosed methods.[349] Further, the format of the reports may limit the comparison of reports across broker-dealers.[350] As a result, customers may not be able to efficiently identify which broker-dealers provide better execution quality. This may reduce the incentives for broker-dealers to compete by offering better execution quality or to innovate on execution quality. Without the incentive to compete by offering better execution quality, broker-dealers may route customer orders in ways that do not necessarily promote better execution quality.[351] Such inefficient routing could have effects on the market for trading services.

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[338] As noted above, including in Section V.B.3., current Rule 606 provides information on the quality of broker-dealer routing practices for retail orders.

[339] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791, 69822 (November 15, 2010) (Risk Management Controls for Brokers or Dealers with Market Access).

[340] *Id.*

[341] *Id.*

[342] Brokerage commissions are fixed according to a client agreement and pay for expected services, such as research, advice, and execution. However, while the commissions may pay for a variety of services, broker-dealers charge them only on a per-share basis at the time of an order's execution. Therefore, the commissions reflect broker-dealers' expectations of customers' average use of services and not the cost of servicing each order execution on a per-share basis. *See* Michael Goldstein, Paul Irvine, Eugene Kandel, and Zwi Wiener, *Brokerage Commissions and Institutional Trading Patterns,* 22 Review of Financial Studies 5175 (December 2009).

[343] *See supra* note 232.

[344] *See supra* note 233.

[345] *See supra* notes 234 and 251.

[346] The Commission preliminarily estimates the number of customers that may place institutional orders as the number of 13F institutions as of December 31, 2015. The Commission recognizes that not all of these institutions necessarily trade NMS Stocks and not all necessarily submit orders that would qualify for the definition of institutional order. Further, some customers that submit institutional orders may not be 13F institutions. While this preliminary estimate may not be precise, the Commission preliminarily believes that it approximates the number of customers that may be affected by the proposed amendments.

[347] *See supra* note 342.

[348] *See supra* Section II.B.

[349] *See generally supra* Sections V.B.1., V.B.4., and V.B.5.

[350] *See supra* Section V.B.5. for a discussion of current formats. Broker-dealers provide reports in a variety of formats and a given broker-dealer may use different structures and formats for different customers. This makes it difficult to electronically read reports into a system to compare multiple broker-dealers and conduct statistical analysis across broker-dealers. Differing formats also make it difficult to electronically search across broker-dealers for various data points in the reports.

The market for trading services, which is served by trading centers, relies on competition among these market centers to supply investors with execution services at efficient prices. These market centers, which compete to, among other things, match traders with counterparties, provide a framework for price negotiation, and provide liquidity to those seeking to trade. As discussed in Section IV.C., the Commission preliminarily estimates that there are 380 market centers to which Rule 605 applies.[352]

These market centers compete with each other for order flow on a number of dimensions, including execution quality. Their primary clients are the broker-dealers who route their own or their customers' orders for execution at the trading center. One way to attract order flow is to offer payment for order flow. The Commission understands that a large portion of retail order flow is sent to internalizers who pay for retail order flow. Trading centers also may innovate to differentiate themselves from other trading centers to attract more order flow. For example, several exchanges recently started pilots intended to provide better execution quality for retail orders to attract more retail order flow.[353] Trading centers also may adjust fees and rebates to incent broker-dealers to route more order flow to them. To the extent that broker-dealers route orders for reasons other than execution quality, trading centers may have less of an incentive to compete and innovate on execution quality. This may limit overall execution quality and result in higher transaction costs for customers than would exist with greater competition on execution quality.

Transaction costs reflect the level of efficiency in the trading process, with higher transaction costs reflecting less efficiency.[354] Inefficiency in the trading process creates friction, which limits the ability for prices to fully reflect a stock's underlying value.[355] Stoll (2000) defines friction as follows: "Friction in financial markets measures the difficulty with which an asset is traded."[356] Stoll follows Demsetz (1968)[357] to "view friction as the price paid for immediacy." Thus, higher transaction costs imply higher friction in the market. Friction makes it more costly to trade and makes investing less efficient. Further, friction limits the ability for arbitrageurs or informed customers to push prices to their underlying values, and thus friction makes prices less efficient.

As a result of the inefficiencies discussed above, a potential increase in transaction costs in particular, may cause customers not to rebalance their portfolios as often as might otherwise be optimal and security prices may less fully reflect true underlying values. This, in turn, may limit efficient allocation and capital formation, as those issuers that have the best ideas may not get the capital needed to fund them. In particular, the less perfectly efficient prices are, the less able customers are to identify the issuers with the most profitable projects and thus the demand for the stock of those issuers may not fully reflect these opportunities. Less demand could result in a lower stock price, which would make it harder for these issuers to raise capital and result in less favorable conditions for the capital they raise.[358]

9. Request for Comment

The Commission requests comments on its baseline analysis. In particular, the Commission solicits comment on the following:

124. Do customers currently request institutional order handling reports from their broker-dealers? Are those reports generally provided and if so, what information do they generally contain? Are there differences in the responsiveness of broker-dealers to requests from different customers and/or over time? Are there differences in the quality or detail of the reports by different broker-dealers? If so, what impact do the differences have on the costs and benefits of the reports? If possible, please provide specific estimates and data.

125. Do broker-dealers already have systems in place to produce order handling reports?

126. Do customers currently receive institutional order handling reports that are comparable to the public reports as proposed by Rule 606(c)? If so, what information is contained in such reports and how, if at all, do those reports differ from the proposed public reports? How do the costs and benefits of those reports compare to the reports as proposed by Rule 606(c)? Please be specific and, if possible, provide specific estimates or data.

127. Do commenters believe that the Commission's assessment of the baseline for the economic analysis is correct? Why or why not? Please be specific.

128. Do commenters believe that the baseline discussion provides a fair representation of current practices under Rules 600, 605, and 606?

129. Do commenters believe that the Commission's description of the competitive landscape for broker-dealers is accurate?

130. Do commenters believe that the market participants identified by the Commission as being affected by the proposed amendments to Rules 600, 605, and 606 is correct?

131. Do commenters believe that the Commission's description of what information market participants currently receive is accurate?

132. Do commenters believe that the Commission's description of the potential conflicts of interest broker-dealers face when routing institutional or retail orders is accurate? Why or why not? Please be specific in your response.

133. Do commenters believe that the Commission's description of the current quality of broker-dealer order routing practices for institutional orders is accurate? Why or why not? Please be specific in your response.

134. Do commenters believe that the Commission's description of the current use of actionable IOIs is accurate? Why or why not? Please be specific in your response.

135. Do commenters believe that the Commission's description of the current level of competition, efficiency, and innovation is accurate? Why or why not? Please be specific in your response.

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[351] *See supra* Section V.B.3. regarding the conflicts of interest broker-dealers have when routing customer orders.

[352] The Commission derived this estimate for purposes of the PRA based on the following: 236 OTC market makers (not including market makers claiming an exemption from the reporting requirements of the Rule), plus 12 exchanges, 1 securities association, 86 exchange market makers, and 45 ATSs.

[353] *See, e.g.,* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) for the NYSE and NYSE MKT pilot; Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) for the Bats BZX pilot; Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (July 30, 2013) for the NYSE Arca pilot; and Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) for the Nasdaq BX pilot.

[354] *See* Hans R. Stoll, *Friction*, 55 Journal of Finance 1479 (August 2000).

[355] *See id.*

[356] *See id.*

[357] *See* Harold Demsetz, *The Cost of Transacting*, 82 Quarterly Journal of Economics 33 (February 1968).

[358] The Commission also notes that less efficiently allocated capital could result in too much relative funding available for unprofitable projects, which erode capital. In other words, allocative inefficiency could mean that some issuers with unprofitable projects could raise capital too easily.

C. Costs and Benefits

The Commission preliminarily identified costs and benefits associated with the proposed amendments to Rules 600, 605, and 606, which are discussed in this section. Many of these costs and benefits are difficult to quantify, especially as the practices of market participants are expected to evolve and may change due to the information on order routing and execution quality that is required to be reported under the proposed amendments to Rules 600, 605, and 606. Therefore, much of the discussion is qualitative in nature but, where possible, the Commission quantifies the costs.

Many, but not all, of the costs of the proposed amendments to Rules 600, 605, and 606 involve a collection of information, and these costs and burdens are discussed in the Paperwork Reduction Act Section above, with those preliminary estimates being used in the economic analysis below.[359]

1. Disclosures for Institutional Orders

a. Definition of Institutional Order in Rule 600(b)(31)

i. Benefits

Proposed Rule 600(b)(31) defines an institutional order as an order to buy or sell an NMS stock that is not for the account of a broker-dealer and is an order for a quantity of an NMS stock having a market value of at least $200,000. The $200,000 threshold determines the number of institutional orders included in the proposed reporting requirements of Rule 606, as orders less than $200,000 in market value are excluded from Rules 606(b)(3) and (c) for reporting purposes. The Commission preliminarily estimates that at least 5% of the total executed volume in NMS securities would meet this threshold.[360] The Commission preliminarily believes that the proposed definition is simple and straightforward, as the same threshold would be applied to all NMS stocks independent of the liquidity and other characteristics of the specific stock. In addition, the definition of an institutional order in proposed Rule 600(b)(31) is the complement to the current definition of a "customer order," which would be renamed "retail order" under the proposed amendment to Rule 600(b)(18) (renumbered as 600(b)(19)). Specifically, proposed Rule 600(b)(19), as amended, defines a "retail order" for NMS stocks as an order to buy or sell an NMS stock that is not for the account of a broker-dealer and is an order for a quantity of an NMS stock having a market value of less than $200,000. The definition of institutional order would dovetail with the definition of retail order such that all customers' orders would be covered by order routing disclosure rules. Moreover, because there would be no overlap in the definitions of retail and institutional orders—that is, an order would be classified as either retail or institutional—there should be no double reporting for any order.[361]

ii. Costs

As noted above, the same threshold would be applied to all NMS stocks independent of a stock's liquidity. This uniform standard may, however, result in orders submitted by institutions that are quite large when considering a stock's activity level not meeting the definition of institutional order. For example, an order for $200,000 in a small-cap stock that is illiquid is very different from an order for $200,000 in a large-cap stock that is very liquid.[362] The Commission recognizes that orders meeting the $200,000 threshold may not be as common for illiquid stocks, and institutional customers may use orders smaller than $200,000, as supported by staff analysis described below. As a result, the proposed definition may result in institutional customers who submit such smaller orders in illiquid stock not obtaining the benefits from the disclosures required in the proposed amendments to Rule 606, although the existing requirements of Rule 606 for retail orders would still apply.

To determine the extent of institutional orders that would not meet this threshold, the Commission staff examined a set of orders from institutions and found that 83.2% of the total number of orders are smaller than $200,000.[363] However, 92% of total dollar volume from orders of institutions in the data meets the proposed definition of an institutional order, *i.e.,* an order to buy or sell a quantity of an NMS stock having a market value of at least $200,000. The percentage of orders from institutions that would meet the definition varies by activity level of the stock, with a higher proportion meeting the definition in more active stocks. While approximately 20% of orders from institutions in the group of most active stocks would meet the proposed definition, less than 3% of orders from institutions in the group of least active stocks would meet the proposed definition.[364] Therefore, the proposed definition of institutional order covers a lower proportion of orders submitted by institutions in less active stocks than it does in more active stocks.

The Commission notes that using any fixed threshold may have another drawback. For example, market participants may change their behavior or stock prices may change over time. Fixed thresholds generally provide an incentive for those affected by the threshold to alter their actions to control whether the action is above or below the threshold. With respect to the threshold in the definition of institutional order, customers may have an incentive to increase their order sizes to exceed the threshold if they can get better information about routing and execution quality for orders exceeding the threshold.[365] If such changes result in

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[359] *See supra* Section IV.

[360] Commission staff calculated this estimate using a sample of institutional orders purchased from Abel Noser Solutions, Ltd., a provider of TCA. The Commission recognizes that this data may not include all institutional orders, but cannot predict how incomplete the data are. The more incomplete this data set is, the more this statistic underestimates the prevalence of institutional orders.

[361] Current Rule 600(b)(18) defines a customer order and the definition is identical to the definition of a retail order in proposed Rule 600(b)(19). Throughout this proposal, we use the term "retail order" rather than "customer order," even if we describe current rules and practices, because "retail order" is the amended terminology proposed and the definitions are identical.

[362] For example, a $200,000 order in a liquid stock could be very small relative to the total activity level of that stock whereas a $150,000 order in an illiquid stock could be half the typical trading volume of that stock. The execution quality of the order in the illiquid stock could be much more dependent on the routing practices of the broker-dealer than the execution quality of the order in the liquid stock.

[363] Information on institutional equity trading for the sample period of 2013–2014 is obtained from Abel Noser Solutions, Ltd. According to an academic study by Puckett and Yan (2011), the dataset contains detailed equity trading information for each Abel Noser client and includes a representative set of institutional investors including pension plan sponsors (*e.g.,* CalPERS, the Commonwealth of Virginia, and YMCA retirement fund) and money managers (*e.g.,* Massachusetts Financial Services (MFS), Putnam Investments, and Lazard Asset Management). These clients accounted for at least 10% of the total trading volume from 1999–2005, according to Puckett and Yan (2011). The Commission assumes for purposes of this analysis that clients have continued to account for at least this volume during its sample period. *See, e.g.,* Andy Puckett and Xuemin (Sterling) Yan, *The Interim Trading Skills of Institutional Investors,* 66 Journal of Finance 601 (April 2011).

[364] A stock is sorted into a decile according to average monthly dollar volume. The most active stocks are defined as being those in the 10th decile of the distribution of stocks as measured by the average monthly dollar volume, and the least active stocks are defined as being those in the 1st decile of the distribution of stocks as measured by the average monthly dollar volume.

[365] The Commission understands that customers currently split large orders across multiple broker-dealers for reasons such as limiting the information that broker-dealers have about the full order. On the margin, the proposed threshold could provide the

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an increase in the size of orders submitted by institutional customers, such that more orders from institutional customers are meeting the $200,000 threshold to qualify as an "institutional order," the proposed amendments to Rule 606 would apply to a bigger proportion of all orders submitted by institutional customers. This would increase the benefits of the proposed amendments to Rule 606 because institutional customers and the public would receive order handling information for a larger proportion of all orders submitted by institutional customers. However, it would also increase the costs of the proposed amendments to Rule 606 because the information required by proposed Rules 606(b)(3) and (c) would have to be disclosed for a larger proportion of all orders submitted by institutional customers. The Commission preliminarily believes that the increase in costs would be negligible because the broker-dealers' systems to generate the reports would already be in place and the marginal costs of adding one order in a report is likely to be low as it would use only little additional computing time. Nonetheless, the Commission preliminarily believes that these incentives may not significantly alter customer order sizes. In particular, if a customer is able to obtain the same level of detail on the routing of all of their orders from broker-dealers, regardless of whether the orders exceed the threshold to be institutional orders, that customer may have little benefit in submitting their orders in larger pieces. Further, an institution that splits its orders to avoid the risk of leaking information to its broker-dealer, would incur information leakage costs with larger order sizes.

Conversely, if changes in market participants' behavior or stock prices resulted in a decrease in the size of orders submitted by institutional customers, such that fewer orders meet the $200,000 threshold for "institutional orders," then the proposed disclosure amendments to Rule 606 pertaining to institutional order handling would apply to a smaller proportion of all orders by institutional customers. This would lead to the public receiving order handling information for a smaller proportion of all orders submitted by institutional customers and therefore would reduce the benefits of the proposed amendments to Rule 606. Still, a decrease in the size of orders submitted by institutional customers could also decrease the costs associated with the institutional order handling disclosure required by the proposed amendments to Rule 606 (since fewer orders would qualify as "institutional orders"). The Commission preliminarily believes, however, that this potential decrease in costs would be negligible since the marginal cost of providing additional information on institutional orders once systems were in place to produce such reports would be negligible. Moreover, under this scenario, the Commission notes that while there may be a decrease in costs associated with institutional order handling disclosures, broker-dealers may experience an increase in the number of orders covered in retail order routing disclosure reports (because the orders that do not qualify as "institutional orders" would nonetheless qualify as "retail orders" based on size). However, the Commission preliminarily believes that any increase in the number of orders in retail order routing reports would result in minimal costs as retail reports do not require extensive order routing information, the system to generate the reports would already be in place, and the marginal costs of adding additional orders would require little computing time.

iii. Request for Comment

The Commission seeks comment on the definition of institutional order as proposed in Rule 600(b)(31) and its analysis of the costs and benefits. In particular, the Commission solicits comment on the following:

136. Do commenters believe that the Commission's proposed definition of institutional order is appropriate from a costs and benefits perspective? If not, please provide alternative definitions with a detailed discussion of what the advantages and costs of those alternatives would be. For example, should the threshold be different for different stocks? If yes, how? Should the threshold be a fixed dollar amount or should it be variable over time or defined differently, *e.g.*, relative to the average daily volume of a stock? Please provide data and analysis to support your view.

b. Customer Requests for Information on Institutional Order Handling Under Proposed Rule 606(b)(3)

i. Benefits

The proposed amendments to Rule 606 would provide transparency about order routing and execution quality for institutional orders. Proposed Rule 606(b)(3) would require standardized reports on institutional order handling, which would be made available to customers upon request.

Competition in the market for brokerage services could be further promoted by more transparent order routing practices and execution quality. The disclosures proposed in Rule 606(b)(3) would provide customers who submit institutional orders, including investment fund managers, standardized information regarding their broker-dealers' order routing practices and execution quality. To the extent that the reports required by proposed Rule 606(b)(3) increase the transparency of institutional order routing and execution quality, broker-dealers would be better able to compete along the execution quality dimensions provided in the reports, such as the fill rate, percentage of shares executed at the midpoint and priced at the near or far side of the quote, and average time between order entry and execution or cancellation for orders posted to the limit order book, in addition to commissions and other considerations that they currently compete on. The Commission preliminarily believes that broker-dealers would have an additional incentive to improve their order routing decisions as customers submitting institutional orders could use the reports required by the proposed amendments to Rule 606 to compare broker-dealers, which in turn could lead to better execution quality for institutional orders.

There could also be an effect on the competition between trading centers. If broker-dealers improve their order routing decisions for institutional orders, thereby routing orders to the trading centers that are more beneficial for their customers, this could further promote competition between trading centers and spur innovation on execution quality. To illustrate, if broker-dealers change their institutional order routing decisions to focus more on execution quality and route fewer orders to a given trading center, that trading center would have an incentive to take measures to attract and gain back order flow by innovating on execution quality.

In addition to comparing broker-dealers based on the reports, customers may also initiate a dialogue with their broker-dealers, or broker-dealers they are considering to use, about their institutional order routing practices to better match the needs of the customers with the order routing practices of the broker-dealers to whom they send orders.

As discussed in Section II.C., some customers currently request and receive reports about order routing and execution quality of their institutional

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incentive to avoid splitting orders to pieces of less than $200,000.

orders from their broker-dealers. However, these reports are not standardized and as a result, it may be difficult to compare broker-dealers based on those reports. In addition, the availability, detail, and quality of such reports likely differ across customers, *e.g.*, it might be the case that customers placing a greater volume of institutional orders have easier access to such reports compared to customers with a smaller volume of institutional orders. Moreover, the information provided by a broker-dealer may vary over time without any standardized or required content for the reports. Proposed Rule 606(b)(3) addresses both of these concerns as the reports would be standardized for all broker-dealers and all institutional customers, making comparisons easier and analysis more useful. Furthermore, every institutional customer would be able to receive reports upon request from their broker-dealer.

However, for customers who already receive reports from their broker-dealers on the handling of their institutional orders, the benefits of the reports required by proposed Rule 606(b)(3) may be modest or even non-existent, depending on the information the customers currently receive. For example, the reports that customers already receive may be more detailed and tailored to the particular customer. The reports also may provide different and potentially more information than what proposed Rule 606(b)(3) requires. Therefore, the proposed disclosure's benefits to customers who may continue to receive detailed tailored reports is preliminarily estimated to be minimal. Nevertheless, these customers would be able to more readily compare broker-dealers due to the proposed requirement that the disclosures be standardized.

Additionally, proposed Rule 606(b)(3) requires that a broker-dealer assign its order routing strategies to one of three categories and that the reports contain information grouped by those order routing strategies: Passive, neutral, and aggressive. Proposed Rule 606(b)(3)(v) defines "passive order routing strategy" as "one that emphasizes minimization of price impact over the speed of execution"; "neutral order routing strategy" as one "that is relatively neutral between minimization of price impact and the speed of execution of the entire institutional order"; and "aggressive order routing strategy" as "one that emphasizes the speed of execution of the entire institutional order over minimization of price impact." The Commission preliminarily believes that the requirement to group information by specified order routing strategy categories should make comparisons among broker-dealers by customers placing institutional orders as well as by the public possible because it would allow customers to control for the fact that broker-dealers may get different types of order flow. For example, to satisfy customer order instructions one broker-dealer may tend to use an aggressive order routing strategy and another broker-dealer may tend to use a passive order routing strategy, and simply comparing these two broker-dealers without considering the order routing strategy category may lead to incorrect or misleading conclusions.

Customers preferring passive order routing strategies may be willing to wait longer for an execution but may want to limit price impact. Customers preferring aggressive order routing strategies, however, may endure some price impact to trade quickly. Therefore, a broker-dealer implementing a passive order routing strategy may, compared to an aggressive order routing strategy, tend to route to a dark pool where execution may be less certain, but likely at a better price.[366] Similarly, a broker-dealer implementing passive order routing strategies may be able to place orders providing liquidity more often, thereby capturing more rebates.[367] As a result, the routing statistics of a broker-dealer that implements predominantly passive order routing strategies should differ from those of a broker-dealer that implements predominantly aggressive order routing strategies. Therefore, including the categories of order routing strategies in the order handling report can facilitate an assessment of how well a broker-dealer manages its conflicts of interest and provides execution quality that matches customer preferences because it provides information on the preferences communicated by that broker-dealers' customers. It can also assist in comparing broker-dealers that may not receive the same mix of order instructions from customers.

The requirement to differentiate the proposed disclosures into the three order routing strategy categories should help mitigate the possibility that the reports could be interpreted incorrectly. However, there could still be differences among broker-dealers in how they classify orders into the three strategy categories, which could make straight comparisons between broker-dealers difficult. Proposed Rule 606(b)(3)(v) requires broker-dealers to "assign each order routing strategy that it uses for institutional orders to one of [the] three categories in a consistent manner for each report it prepares," to "promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments," and to "document the specific methodologies it relies upon for making such assignments." The proposed Rule defines the general characteristics of the three order routing strategies in terms of the trade-off between the minimization of price impact and the speed of execution of the entire institutional order. However, the proposed Rule does not prescribe how this trade-off should be taken into consideration. Broker-dealers would have discretion to determine how to do this when establishing their methodologies to assign categories in a consistent manner and when applying the methodologies to assign into categories the routing strategies and, as a result, broker-dealers might not have the exact same definitions for the three order routing strategy categories.

Under proposed Rule 606(b)(3), customers can obtain detailed information on the broker-dealer internalization rate and payment for order flow received. Currently, broker-dealers may prefer to internalize uninformed order flow.[368] Under proposed Rule 606(b)(3), a customer would have information on whether its order flow is being internalized and could use this information in its relationships with its broker-dealers. Similarly, a customer would be able to examine the payment for order flow to determine if its order flow is sold to a third-party. In addition, customers may be interested in how maker-taker fees affect where broker-dealers route their institutional orders. If a customer pays a flat-rate commission to its broker-dealer, and any fraction of the rebate is retained by the broker-dealer, then the broker-dealer has a financial incentive to route the order to the trading center offering the highest rebate or lowest fee.[369] At present, the brokerage commission, which is known to the customer, may be lowest when a broker-dealer concentrates order flow in a high rebate and/or low fee trading center.[370] Customers might be concerned if orders routed to a high-rebate destination do not execute or do so with a delay, as information about the order may leak into the market, thereby affecting price impact.

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[366] *See, e.g.*, Albert J. Menkveld, Bart Zhou Yueshen, and Haoxiang Zhu, *Shades of Darkness: A Pecking Order of Trading Venues*, Working Paper (2015). The authors find that there exists a pecking order of trading venues that puts low-cost-low-immediacy venues on top and high-cost-high-immediacy venues at the bottom. This suggests that if an order is a passive order and executed with passive order routing strategy, the broker-dealer would prefer low-cost-low-immediacy venues, which the paper identifies as dark pools that execute at the midpoint.

[367] Compared to an aggressive order routing strategy, a passive order routing strategy may reduce transaction costs and allow the capture of rebates, but immediate execution is not certain. *See* Lawrence Harris and Joel Hasbrouck, *Market vs. Limit Orders: The SuperDOT Evidence on Order Submission Strategy*, 31 Journal of Financial and Quantitative Analysis 213, 230 (June 1996) (concluding that passive order routing strategies achieve better average performance than aggressive order routing strategies in certain markets). *See also* Maker-Taker Memo, *supra* note 55, at 18 (discussing maker-taker fees in U.S. equity markets). A broker-dealer can be more patient in implementing a passive order routing strategy and does not have to seek immediate execution.

[368] *See* Hitesh Mittal, *Are You Playing in a Toxic Dark Pool? A Guide to Preventing Information Leakage*, 3 Journal of Trading 20 (Summer 2008).

Proposed Rule 606(b)(3) requires the inclusion of actionable IOIs in institutional order handling disclosures. Proposed Rule 600(b)(1) defines an actionable IOI as "any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and (4) a size that is at least equal to one round lot."

The inclusion of actionable IOIs in the proposed reporting requirements of broker-dealers should provide customers a more complete picture of how their institutional orders are handled. Since actionable IOIs can convey similar information as an order, a response to an actionable IOI may result in an execution at the venue of the IOI sender and thus can represent a portion of the liquidity available at a given price and time. The Commission therefore preliminarily believes that actionable IOIs should be included in the required disclosure of how institutional orders are handled. In addition, because an actionable IOI can convey similar information as an order, the use of actionable IOIs may contribute to information leakage in a similar way as the use of orders.[371] Excluding actionable IOIs therefore would not provide a complete picture of institutional order routing and executions and could provide broker-dealers with an incentive to use actionable IOIs instead of orders to circumvent the proposed disclosure requirements in Rule 606.

The proposed definition of actionable IOI in Rule 600(b)(1), however, may limit the benefits achieved. Specifically, the proposed definition is substantively similar to the description of actionable IOI in the Regulation of Non-Public Trading Interest Release. Comments received on the Regulation of Non-Public Trading Interest Release indicated that some commenters are concerned that the discussion of actionable IOIs in that release was too stringent.[372] If the proposed definition of actionable IOIs is, in fact, too stringent, then some IOIs would not be included in the definition of actionable IOI and would not be captured by the proposed reports on institutional order handling. Consequently, it is possible that institutional customers might find the reports to be less informative on institutional order handling than if the definition of actionable IOIs was broader. This suggests that defining actionable IOIs too narrowly may limit the benefits of the proposed amendments.

An additional benefit of having the institutional order handling information available upon request is that institutional customers could combine the order handling information with existing TCA or enhance their TCA. As noted above, institutional customers often work with independent third-party vendors to perform TCA as a means of evaluating the cost and quality of brokerage services. Institutional customers can also conduct their own TCA in-house. TCA, whether conducted in-house or by a third-party, generally analyzes data on the parent orders, but typically cannot analyze data on the child orders because of the lack of standardization of the current ad hoc order handling information. As a consequence, existing TCA typically does not incorporate information on how many child orders exist, a broker-dealer's institutional order routing strategy, nor cost, routing, and execution quality for individual child orders. The disclosures required by proposed Rule 606(b)(3) would close this informational gap, so that customers would have more information on how broker-dealers handle and execute parent and child institutional orders.

With this additional information, institutional customers or their third-party vendors could combine the routing information with execution information to conduct a more thorough TCA than they can currently. In particular, the information in proposed Rule 606(b)(3) may be a factor that can explain transaction cost variations and thus, the reports from the proposed amendments could be combined with TCA to help explain differences in transaction costs and in performance as measured by TCA across broker-dealers. For example, TCA often includes transaction cost measures such as implementation shortfall, but proposed Rule 606(b)(3) would not.[373] With TCA alone, a customer may observe different implementation shortfall across broker-dealers. The proposed amendments could allow the customers or their third-party vendors to correlate implementation shortfall with the routing decisions of the broker-dealers. This could assist the customers in assessing the execution quality provided by their broker-dealers. In summary, the Commission preliminarily believes that proposed Rule 606(b)(3) may complement and enhance all customers' evaluations of institutional order handling quality, including those of customers who use TCA.

Finally, proposed Rule 606(b)(3) would require reports to be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site.[374] The benefits, as well as the costs, associated with this requirement are discussed in Section V.C.4.

ii. Costs

As discussed above, some customers currently request reports about the handling of their institutional orders from their broker-dealers and those reports may be less or more detailed and provide different and potentially less or potentially more information than proposed Rule 606(b)(3) would require. If the reports broker-dealers currently provide to a customer more or different information, proposed Rule 606(b)(3) could impose a cost on such a customer to the extent broker-dealers stop providing the more detailed or additional information and instead provide only the data required for institutional order handling by proposed Rule 606(b)(3). The Commission preliminarily believes that this scenario is not very likely because, even if Rule 606(b)(3) is adopted, customers could still request additional information or customized reports from their broker-dealers and broker-dealers are likely to satisfy such requests, to the extent they currently do, to retain their customers. As discussed above, the willingness of broker-dealers to provide such customized reports to customers and how detailed such a report is might depend on the business relationship between the broker-dealer and the customer. Customers who send or may send a large number of orders to a broker-dealer might be able to get customized reports more easily compared to customers who send fewer orders, and those reports might be more detailed compared to reports that customers who send fewer orders receive. While proposed Rule 606(b)(3) mitigates this issue in that every customer would be able to request the standardized reports required by proposed Rule 606(b)(3), the Commission recognizes that to the extent large institutional customers are able to receive customized reports that provide information not contained in the required reports, those large institutional customers would continue to have an advantage over smaller institutional customers who are not able to receive the same reports.

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[369] A broker-dealer may take into account rebates when setting its flat-rate commission by asking for a lower commission. As long as the rebates are not passed through to the customer, however, the broker-dealer still has the incentive to maximize rebate capture.

[370] *See* Shawn O'Donoghue, *The Effect of Maker-Taker Fees on Investor Order Choice and Execution Quality in U.S. Stock Markets* (January 23, 2015), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2607302.*

[371] *See supra* Section II.C.4.

[372] Comments on the proposed rule for Regulation of Non-Public Trading Interest are available at *http://www.sec.gov/comments/s7-27-09/s72709.shtml.* Comments on actionable IOIs can be found in the following letters: *http://www.sec.gov/comments/s7-27-09/s72709-46.pdf* and *http://www.sec.gov/comments/s7-27-09/s72709-8.pdf.*

[373] For example, proposed Rule 606(b)(3) would not require reports to contain any information on implementation shortfall costs of parent orders, which are a key focus for investors placing institutional orders. In general, the proposed amendments are not intended to replace TCA and, therefore, do not include many metrics common to TCA. However, the Commission recognizes that the ability to use the proposed amendments to enhance TCA may make TCA more valuable and increase the incentives for customers to use TCA, either in-house or through a third-party vendor.

[374] *See supra* Section III.A.3.

In addition, the greater transparency provided as a result of the new reports required under proposed Rule 606(b)(3) might lead broker-dealers to change how they handle institutional orders. Given that broker-dealers would be aware of the metrics to be used a priori, they might route institutional orders in a manner that promotes a positive reflection on their respective services but which may be suboptimal for their customers. Any changes to broker-dealers' order routing decisions due to proposed Rule 606(b)(3) may be intended to benefit customers placing institutional orders, but if broker-dealers and customers focus exclusively on the metrics in the reports required by proposed Rule 606(b)(3), the order routing decisions could also be viewed as suboptimal for some customers.

For example, suppose a broker-dealer routes institutional orders so that the orders execute at lower cost with a higher fill rate, shorter duration, and more price improvement than the broker-dealer's competitors. However, it could be the case that, in order to achieve these objectives, the broker-dealer routes the majority of non-marketable limit order shares to the trading center offering the highest rebate. An institutional customer that reviews the proposed routing reports might suspect that the broker-dealer acted in its self-interest by selecting the highest rebate venue in order to maximize rebates when in fact, the broker-dealer made the decision based on other variables, which might not be completely reflected in the proposed reports. Under the proposed amendments to Rule 606, the broker-dealer may be concerned about the perception of acting on a conflict of interest, when the broker-dealer is in fact acting in the customers' interests. As a result, a broker-dealer may be incentivized to route fewer non-marketable limit order shares to the trading center offering the highest rebate, even if this imposes additional costs on the broker-dealer's customers, in an effort to ensure that a customer does not misconstrue the intent behind the broker-dealer's routing decisions. Such a potential outcome could reduce the intensity of competition between broker-dealers on the dimension of execution quality.

In addition, as noted above, proposed Rule 606(b)(3) requires the inclusion of actionable IOIs in the reports on institutional order handling broker-dealers would provide to their customers. The Commission expects that broker-dealers will incur costs from the inclusion of actionable IOIs in the reports as a result of having to process additional data and run additional calculations. The estimated cost of including actionable IOIs in the proposed reports is included in the aggregate costs described in the discussion below and in greater detail in Section IV.D.1.

The disclosure requirements of proposed Rule 606(b)(3) would also impose a monetary cost, as the required disclosures could entail some reprogramming by broker-dealers that execute or route institutional orders. These costs may be low for a given broker-dealer if the broker-dealer already supplies similar reports on institutional order handling upon requests by their customers. In addition to reprogramming, receiving and processing customer requests as well as preparing and transmitting the data to customers on request would impose costs.

As discussed in Section IV.D.1., the Commission preliminarily estimates that the one-time, initial burden for a broker-dealer that routes institutional orders that does not currently retain the proposed order handling information to program systems in-house to implement the requirements imposed by the proposed amendments to Rule 606 would be 200 hours resulting in a monetized cost burden of $60,420 per broker-dealer.[375] The Commission preliminarily estimates the one-time, initial burden for a broker-dealer that routes institutional orders that does not currently create the proposed order handling information to engage a third-party to program their systems to implement the requirements of the proposed amendments to Rule 606(b)(3) to be 50 hours resulting in a monetized cost burden of $15,125 per broker-dealer.[376] In these cases, the Commission further preliminarily estimates a fee of $35,000 per broker-dealer to engage the third-party service provider.[377] The Commission preliminarily believes that most broker-dealers either have systems that currently retain the information required by the proposed rule, or use third-party vendors who have systems that retain such information. The Commission therefore preliminarily estimates that 25 broker-dealers that route institutional orders do not currently have systems that retain the information required by the proposed amendments or use a third-party vendor to retain such information.[378] The Commission preliminarily estimates that of the 25 broker-dealers that route institutional orders who do not currently have systems in place to retain the information required by the proposed rule, 10 such broker-dealers will perform the necessary programming upgrades in-house, and 15 will engage a third-party to perform the programming upgrades. Additionally, of the 25 broker-dealers that route institutional orders who do not currently have systems in place to retain the information required by the rule, the Commission preliminarily estimates that 10 such broker-dealers will need to purchase hardware and software upgrades to fulfill the requirements of the proposed rule at an average cost of $15,000 per broker-dealer, and that the remaining 15 broker-dealers have adequate hardware and software to retain the information proposed by the rule. Therefore, the total initial burden for all broker-dealers that route institutional orders who do not currently retain order handling information required by the proposed rule to program systems to comply with the proposed rule change is 2,750 hours resulting in a monetized cost burden of $831,075, plus an additional fee of $675,000 to engage the third-party service providers.[379]

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[375] *See supra* note 237.

[376] *See supra* note 238.

[377] *See supra* note 239.

[378] *See supra* note 236.

As discussed in Section IV.D.1., the Commission preliminarily estimates the average cost for a broker-dealer who routes institutional orders who already retains information required by the proposed rule to format its systems to produce a report to comply with the proposed rule to be 40 hours resulting in a monetized cost burden of $12,084.[380] The Commission preliminarily estimates the average burden for a broker-dealer who routes institutional orders who uses a third-party service provider to work with such service provider to ensure proper reports are produced to be 20 hours resulting in a monetized cost burden of $5,726.[381] In these cases, the Commission further preliminarily estimates a fee of $5,000 per-broker to engage the third-party service provider.[382] The Commission preliminarily estimates that, of the 175 broker-dealers who route institutional orders who currently retain the information required pursuant to the rule and need only format their systems to produce a report required by the rule, 50 such broker-dealers will use a third-party vendor to ensure proper reports are produced and the remaining 125 broker-dealers will perform the necessary work in-house. Thus, the total cost for all broker-dealers who route institutional orders who only need to format their systems to prepare a report to comply with the proposed rule is preliminarily estimated to be 6,000 hours resulting in a monetized cost burden of $1,796,800, plus an additional fee of $250,000 to engage the third-party service providers.[383] Therefore, the total initial burden for all broker-dealers to comply with proposed Rule 606(b)(3) is preliminarily estimated to be 8,750 hours resulting in an estimated cost of $2,627,875, plus an additional fee of $925,000 to engage the third-party service providers.[384]

As discussed in Section IV.D.1, the Commission preliminarily estimates that an average response to a Rule 606(b)(3) request for a broker-dealer who handles its own responses will take approximately 2 hours per response resulting in a monetized cost burden of $380.[385] For a broker-dealer that routes institutional orders who will use a third-party service provider to respond to requests pursuant to Rule 606(b)(3), the Commission preliminarily estimates the burden to be 1 hour per response resulting in a monetized cost burden of $283.[386] In these cases, the Commission preliminarily estimates an additional third-party service provider fee of $100 per response.[387] The Commission preliminarily estimates that an average broker-dealer will receive approximately 200 requests annually.[388] Therefore, the total annual burden for all 200 broker-dealers that route institutional orders to comply with the customer response requirement in proposed Rule 606(b)(3) is preliminarily estimated to be 67,000 hours, resulting in a monetized cost burden of $13,939,000, plus an additional fee of $1,300,000 to compensate third-party service providers for producing the reports.[389]

Further, as a result of proposed Rule 606(b)(3), broker-dealers that route institutional orders would likely re-evaluate their best execution methodologies to take into account the availability of new statistics and other information that may be relevant to their decision making. This may impose a cost only to the extent that broker-dealers choose to build the proposed statistics into their best execution methodologies. In addition, they may only choose to do so if the benefits justify the costs.

Another potential cost of proposed Rule 606(b)(3) is that the reports could be viewed as a replacement of TCA and therefore have a negative impact on the market for TCA. Specifying a minimum length of time for making the Rule 606 reports publicly available may further impose a cost on third-party vendors that aggregate the time series of the reports. For example, suppose that a customer chooses to no longer purchase TCA once reports from proposed Rule 606(b)(3) become available, because the customer decides that the information contained in proposed Rule 606(b)(3) reports is sufficient. If fewer customers purchase TCA, it would have a negative impact on third-party providers of TCA as well as third-party data vendors, *e.g.*, in terms of less demand for their services, and the quality of TCA provided by third-parties may decrease because third-party providers of TCA might have fewer resources for the development and maintenance of their product offerings and because fewer customers may also lead to less data the third-party providers can base their models on.[390] However, as discussed in Section V.C.1.b.i, the reports required by proposed Rule 606(b)(3) would provide information that could be complementary to TCA. As discussed above, in fact, proposed Rule 606(b)(3) could make TCA more useful and provide incentives to customers to use TCA. As a result, the Commission preliminarily believes that proposed Rule 606(b)(3) will not replace TCA.

As discussed in Section V.C.1.b.i, proposed Rule 606(b)(3) would require differentiating order routing strategies for institutional orders into three types: Passive, neutral, and aggressive order routing strategies. The Commission preliminarily believes that broker-dealers would incur costs associated with creating their methodologies, assigning each order routing strategy for institutional orders into one of these three categories according to the methodologies, promptly updating the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments, and documenting the specific methodologies it relies upon for making such assignments. The Commission preliminarily estimates the one-time, initial burden for a broker-dealer that routes institutional orders to establish and document in-house its specific methodologies for assigning order routing strategies as required by proposed Rule 606(b)(3)(v) to be 40 hours resulting in a monetized cost burden of $12,620.[391] The Commission preliminarily estimates the one-time, initial burden for a broker-dealer that routes institutional orders who will work with a third-party service provider to assign into categories its current order routing strategies and establish and document its specific methodologies as required by Rule 606(b)(3)(v) to be 10 hours resulting in a monetized cost burden of $2,896 plus an additional fee of $5,000 to the third-party service provider.[392] These figures are based on the estimated number of hours to establish and review such methodologies. As noted above, the

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[379] *See supra* note 240.

[380] *See supra* note 242.

[381] *See supra* note 243.

[382] *See supra* note 244.

[383] *See supra* note 245.

[384] *See supra* note 247.

[385] *See supra* note 250.

[386] *See supra* note 254.

[387] *See supra* note 255.

[388] *See supra* note 251.

[389] *See supra* notes 259 and 260.

[390] Based on staff experience, the Commission understands that customers of third-party TCA providers typically transmit their execution data to their TCA providers. The third-party TCA providers in turn base their models on the data they receive from all their customers. Having more data to base models on is generally beneficial and may result in better models.

[391] *See supra* note 277.

[392] *See supra* notes 279 and 280.

Commission preliminarily estimates that 135 broker-dealers who route institutional orders will create the required reports themselves while 65 such broker-dealers will use a third-party service provider to create the required reports. Therefore, the total initial burden for all broker-dealers that route institutional orders to assign its routing strategies into passive, neutral, and aggressive strategies is preliminarily estimated to be 6,050 hours resulting in a monetized cost burden of $1,891,940 plus an additional fee of $325,000 to the third-party service providers.[393]

Once the methodologies are established and documented, broker-dealers that route institutional orders would be required to assign each order routing strategy for institutional orders into one of these three categories according to the methodologies in a consistent manner and promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignments.[394] The Commission preliminarily estimates that the annual cost for a broker-dealer who will assign its order routing strategies to one of the three categories and update such assignments in-house to comply with Rule 606(b)(3)(v) will be 15 hours resulting in a monetized cost burden of $3,500.[395] The Commission preliminarily estimates that the annual burden for a broker-dealer who routes institutional orders who engages a third-party service provider to assign the order routing strategies into categories to comply with Rule 606(b)(3)(v) will be 5 hours resulting in a monetized cost burden of $1,609 plus an additional third-party service provider fee of $1,000.[396] As noted above, the Commission preliminarily estimates that 135 broker-dealers who route institutional orders will create the required reports themselves while 65 such broker-dealers will use a third-party service provider to create the required reports. Therefore, the total annual burden for broker-dealers that route institutional orders to assign the routing strategies of their institutional orders into passive, neutral, and aggressive strategies is preliminarily estimated to be 2,350 hours resulting in a monetized cost burden of $577,085 plus an additional third-party service provider fee of $65,000.[397]

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 606(b)(3). In particular, the Commission solicits comment on the following:

137. Are the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal appropriate? Please provide data and analysis to support your view.

138. Do commenters believe that broker-dealers currently have systems that contain the data that would be used in the reports? What data would be incremental to that already maintained by broker-dealers? What incremental costs would be necessary to modify and maintain information systems architecture?

139. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

140. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended consequences that have not been discussed that may result from the proposal?

141. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

The Commission also seeks comment on the analysis of the costs and benefits for the definition of an actionable IOI in proposed Rule 600(b)(1). In particular, the Commission solicits comment on the following:

142. Do commenters believe that the Commission's proposed definition of actionable IOI is appropriate in light of the estimated costs and benefits? If not, please provide alternative definitions with a detailed discussion of what the benefits and costs of those alternatives would be. Please provide data and analysis to support your view.

c. Public Reports for Institutional Orders Under Proposed Rule 606(c)

i. Benefits

Proposed Rule 606(c) would require public quarterly reports broken down by calendar month on the order routing and execution quality of institutional orders by each broker-dealer. As a result, proposed Rule 606(c) would provide the public with standardized information regarding all broker-dealers' institutional order routing practices and execution quality aggregated across each broker-dealer's customers.

While these reports would be aggregated across all customers a broker-dealer serves, the reports would allow current and prospective customers to compare broker-dealers' institutional order routing practices and execution quality and ultimately, to inform their choice of broker-dealers. For example, customers may use the quarterly public reports broken down by calendar month to decide whether they should enter into a business relationship with broker-dealers to whom they do not currently send orders. Additionally, the reports may allow customers to compare the execution services of their current broker-dealers with other competitors, who might offer the same execution quality at lower costs, improved execution quality at the same costs, or lower cost services and better execution quality.

As discussed in Section V.C.1.b.i, greater transparency about order routing practices and execution quality may promote competition in the market for brokerage services and between trading centers. The Commission preliminarily believes that public aggregated institutional order handling reports required by proposed Rule 606(c) would increase the transparency of institutional order routing and execution quality and provide additional information to customers beyond that provided by customer-specific reports required by proposed Rule 606(b)(3). Customers would be able to compare their broker-dealers not just based on the orders they send to the broker-dealers, but also based on all institutional orders handled by the broker-dealers. In addition, customers would be able to evaluate the order routing and execution quality of broker-dealers they do not send orders to and could determine whether to send orders to a given broker-dealer based on such evaluation.

Broker-dealers, in turn, might be able to adjust their business practices to compete better, specifically along the dimensions of order routing and execution quality and, through the public aggregated institutional order handling reports, try to attract orders from customers with whom they do not yet have a business relationship. The Commission preliminarily believes that the broker-dealers would have greater incentive to route institutional orders in a manner beneficial to a customer in order to attract additional order flow from those customers who may use the public aggregated institutional order handling reports required by proposed Rule 606(c) to compare relative broker-dealer execution quality. Ultimately, greater transparency may increase competition in the brokerage services market, thereby potentially reducing costs to customers in terms of cost of services and execution quality for institutional orders, of which transaction costs is one measure.

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[393] *See supra* notes 283 and 284.

[394] For example, a broker-dealer may develop new order routing strategies, change existing order routing strategies, or change the descriptions of existing order routing strategies.

[395] *See supra* note 285.

[396] *See supra* notes 287 and 288.

[397] *See supra* notes 291 and 292.

As discussed in Section V.C.1.b.i, if broker-dealers change their institutional order routing decisions, it might promote competition among trading centers. The public aggregated institutional order handling reports required by proposed Rule 606(c) would allow trading centers to compare the execution quality of orders on different trading centers as well as the routing behavior of broker-dealers. The trading centers would have a further incentive to improve execution quality to attract order flow and the public aggregated institutional order handling reports that are broken down by month would allow them to see the effects of any changes they implement. In addition, this may lead to innovation by existing trading centers and it may attract new entrants and the formation of new trading centers.

As discussed for the customer-specific reports required by proposed Rule 606(b)(3) in Section V.C.1.b.i, customers may also initiate a dialogue with their broker-dealers, or broker-dealers they are considering to use, based on the public aggregated institutional order handling reports required by proposed Rule 606(c). This dialogue may include discussions about conflicts of interest[398] and how to match the needs of customers with the order routing practices of the broker-dealers to whom they send orders.

Further, third-party vendors offering analytical services may use the information in the public aggregated institutional order handling reports in an attempt to sell customized reporting tools and services. These types of consulting services may allow customers and the public to better identify the potential conflicts of interest that broker-dealers face with directing order flow to trading centers offering liquidity rebates and fees.

Greater transparency of institutional order routing and execution could help shed light on the effect of today's dispersed and complex market structure on order routing decisions and related execution quality. The Commission preliminarily believes that the requirement in proposed Rule 606(c) for quarterly disclosure on order routing, order execution, and orders that provide and remove liquidity for each venue broken down by order routing strategy should provide the public with a better understanding of the operating procedures of broker-dealers and how their decisions are affected by the current market structure. In addition, the information on rebates and fees broker-dealers receive or incur would allow the public to assess how broker-dealers manage potential conflicts of interest they face when routing institutional orders.

As discussed for the customer-specific reports required by proposed Rule 606(b)(3) in Section V.C.1.b.i., the public aggregated institutional order handling reports broken down by calendar month required by proposed Rule 606(c) would also give customers information about broker-dealer internalization rates and the rebates received and fees paid by broker-dealers. As described above, the public aggregated institutional order handling reports would require the disclosure of information by all broker-dealers that receive institutional orders. Customers would be able to compare internalization rates of their broker-dealers and rebates received and fees paid by their broker-dealers to those of broker-dealers they do not send orders to. As such, the information about broker-dealer internalization rates, rebates, and fees in the public aggregated institutional order handling reports required by proposed Rule 606(c) would be complementary to the customer-specific reports required by proposed Rule 606(b)(3), which would provide customers only information about their orders rather than all orders a given broker-dealer receives.

In addition, proposed Rule 606(c) would require the public aggregated institutional order handling reports to be posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. This requirement would allow customers and the public to readily access historical data for at least three years without the need to download the reports frequently, *e.g.*, quarterly, or purchasing the data from a third-party vendor. Customers and the public could analyze the historical data and evaluate the order routing decisions and execution quality provided by broker-dealers based on the historical data.

Further, the public aggregated institutional order handling reports required by proposed Rule 606(c) could improve the extent and quality of information available to the Commission and other regulatory agencies, thereby assisting in the regulatory oversight of broker-dealers' operations.

Finally, proposed Rule 606(c) would require the public aggregated institutional order handling reports be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site.[399] The benefits and costs associated with this requirement are discussed in Section V.C.4.

ii. Costs

The Commission considered whether the public aggregated institutional order handling reports that would be required pursuant to proposed Rule 606(c) may disclose information about specific institutional orders that currently is not publicly available, and preliminarily believes that the possibility of such disclosure and associated costs are small. First, the reports required by proposed Rule 606(c) would be quarterly reports broken down by calendar month made public within one month after the end of the quarter. As a result, it is very unlikely that the reports would contain any information about orders that are being worked by broker-dealers at the time of publication. Second, the reports would be aggregated across all customers a broker-dealer serves. To the extent that a broker-dealer serves multiple customers placing institutional orders, it would be difficult to identify the orders of a particular customer in the proposed reports. However, it is possible that, for example, a smaller broker-dealer may have one customer placing institutional orders that represents the majority of its business and this may be known to other market participants. In this case, it may be possible to learn from the reports some information about the order flow of that customer, particularly the order flow given to the specific broker-dealer. This information would not be about active orders but could provide historical information about the general characteristics of the customer's order flow, *e.g.*, how much of its order flow has been handled using aggressive or passive order routing strategies. To the extent that these characteristics apply to future orders, this information may be useful to other market participants. Such a potential outcome could put smaller broker-dealers (that is, those with a small set of customers or handling a relatively small number of institutional orders) at a competitive disadvantage relative to larger broker-dealers, as customers might avoid using smaller broker-dealers to avoid possible disclosure that could be traced back to the customer. However, because the proposed public aggregated institutional order handling report would not disclose the specific orders and the historical data would reflect prior calendar quarters, the Commission preliminarily believes that the potential risks and costs due to this would be small.

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[398] As noted above, institutional customers may be able to utilize the customer-specific reports as required by proposed Rule 606(b)(3) to examine the venues their broker-dealers are routing orders to and the rebates received and fees paid. The Commission notes that similar information would be reflected in the public aggregated institutional order handling reports and could be useful for institutional customers to discuss order routing practices and management of conflicts of interest with broker-dealers or prospective broker-dealers.

[399] *See supra* Section III.A.3.

Proposed Rule 606(c) would require each broker-dealer to post the public aggregated institutional order handling report for a period of three years from the initial date of posting on the Internet Web site. As noted above, the Commission preliminarily believes that, once the report is posted, maintaining the report on the Web site will not impose any additional burden on broker-dealers, and thus any additional costs to maintain the report on the Web site would be negligible.

The disclosure requirements of proposed Rule 606(c) would impose a cost, as they would require some reprogramming by broker-dealers that handle institutional orders. In addition, preparing and disseminating the data to the public in the form required by proposed Rule 606(c) would impose costs on such broker-dealers. However, a broker-dealer could use the infrastructure and processes they put in place for the customer-specific reports required by proposed Rule 606(b)(3) such that the additional cost to comply with proposed Rule 606(c) may be low. The Commission preliminarily estimates that a broker-dealer who handles institutional orders and formats and creates public aggregated institutional order handling reports itself will incur an initial burden of 20 hours resulting in a monetized cost burden of $4,990 to comply with the quarterly reporting requirement of proposed Rule 606(c).[400] The Commission preliminarily estimates that a broker-dealer who uses a third-party service provider to create the public aggregated institutional order handling reports would incur an initial burden of 5 hours resulting in a monetized cost burden of $1,415 plus an additional third-party service provider fee of $2,500.[401] As noted above, the Commission preliminarily estimates that 135 broker-dealers who route institutional orders will create the required reports themselves while 65 such broker-dealers will use a third-party service provider to create the required reports. Therefore, the total initial burden for broker-dealers that route institutional orders to produce the quarterly report is preliminarily estimated to be 3,025 hours resulting in a monetized cost burden of $765,625 plus an additional $162,500 fee to compensate third-party service providers for producing the reports.[402]

Further, the Commission preliminarily estimates that each broker-dealer that routes institutional orders who prepares its own reports will incur an average burden of 10 hours resulting in a monetized cost burden of $1,600[403] to prepare, disseminate, and keep for a period of three years a quarterly report required by proposed Rule 606(c), or a burden of 40 hours resulting in a monetized cost burden of $6,400 per year.

The Commission preliminarily estimates that each broker-dealer that routes institutional orders that uses a third-party service provider to prepare the reports required under proposed Rule 606(c) will incur an average burden of 2 hours resulting in a monetized cost burden of $443 plus an additional third-party service provider fee of $500[404] to prepare and make publicly available a quarterly report, or a burden of 8 hours resulting in a monetized cost burden of $1,772 plus an additional third-party service provider fee of $2,000 per year.[405] As noted above, the Commission preliminarily estimates that 135 broker-dealers who route institutional orders will create the required reports themselves while 65 such broker-dealers will use a third-party service provider to create the required reports. Therefore, the total burden per year for all broker-dealers who route institutional orders to comply with the reporting requirement in proposed Rule 606(c) is preliminarily estimated to be 5,920 hours resulting in a monetized cost burden of $979,180 plus an additional third-party service provider fee of $130,000.[406]

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 606(c). In particular, the Commission solicits comment on the following:

143. Do commenters believe that the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal are appropriate? Please provide data and analysis to support your view.

144. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

145. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended consequences not discussed above that may result from the proposal?

146. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

2. Disclosures for Retail Orders

Rule 606(a) requires each broker-dealer to make publicly available quarterly reports on its routing of non-directed orders in NMS securities. The Commission preliminarily believes that the proposed amendments to Rule 606(a) would increase the level of transparency about order routing and execution quality for retail orders through the enhanced disclosure of data regarding order routing and execution. The proposed amendments to Rule 606(a) require that the public quarterly reports be broken down by calendar month and differentiate between marketable and non-marketable limit orders. The proposed amendments also would remove the requirement that the quarterly reports be divided into three separate sections for securities that are listed on the NYSE, Nasdaq, and Amex. The proposed amendments to Rule 606(a)(1)(iii) also require that the reports include for Specified Venues the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for specified types of orders. The proposed amendment to Rule 606(a)(1)(iv) would add the requirement that broker-dealers describe any terms of payment for order flow arrangements and profit-sharing relationships with Specified Venues that may influence their order routing decisions, including, among other things: (1) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (2) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (3) volume-based tiered payment schedules; and (4) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.[407] In addition, the proposed amendments to Rule 606(a) would require broker-dealers to keep their reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site, and would require such reports to be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site.

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[400] *See supra* note 261.

[401] *See supra* notes 262 and 263.

[402] *See supra* note 264.

[403] *See supra* note 266.

[404] *See supra* notes 269 and 270.

[405] *See supra* notes 271 and 272.

[406] *See supra* notes 275 and 276.

The benefits and costs of each of these proposed amendments are discussed below. Wherever possible, we quantify cost estimates for a given amendment. For the remaining amendments concerning retail orders, we provide total quantitative cost estimates for these amendments in Section V.C.2.e.

a. Marketable Limit Orders and Non-Marketable Limit Orders

i. Benefits

The proposed amendments to Rule 606(a), which applies to retail orders, would require broker-dealers to differentiate between marketable and non-marketable limit orders. Marketable and non-marketable limit orders generally are handled differently, *i.e.*, non-marketable limit orders are typically posted to an order book, which may result in a different fee or rebate compared to a marketable limit order that may be immediately executed and not posted to the book.

The proposed amendments could allow the public, including customers placing retail orders, to better understand the potential for conflicts of interest broker-dealers face when routing retail orders. For example, if a broker-dealer routes all non-marketable limit orders to the trading centers that pay the highest rebate for orders providing liquidity, the broker-dealer may be maximizing its revenue potentially to the detriment of execution quality. Recent academic research has identified indications of such routing behavior for retail orders.[408] On examining the order routing of ten broker-dealers, the researchers find that four of the broker-dealers sell market orders to market makers and route limit orders to market makers or exchanges offering the largest liquidity rebates. In addition, their study indicates that a negative relation exists between take fees and the likelihood that a limit order fills and the speed and realized spread of the associated fill.[409] The disclosure of order routing data broken down by marketable and non-marketable limit orders could incentivize broker-dealers to better manage these and other potential conflicts of interest, which may result in improved order routing decisions and execution quality for retail orders. The disclosure could also help customers and others to assess if and how well broker-dealers manage the potential conflicts of interest they face when routing retail orders, and would be a way for broker-dealers to show that they are indeed managing these potential conflicts of interest.

In addition, if the additional proposed disclosure results in broker-dealers improving their order routing for retail orders, which, in turn, may change which trading centers the broker-dealers route retail orders to, the proposed disclosure could further promote competition among trading centers. The new information that would be in the public reports required by proposed Rule 606(a)(1) would allow trading centers to compare the order routing decisions of broker-dealers and the trading centers retail orders are routed to, which could then inform how the trading centers attempt to attract retail order flow. The quarterly public reports, which would be broken down by month, would allow trading centers to see effects of any adjustments they implement in response to broker-dealers changing their order routing strategies. In addition, this proposed new disclosure may lead to innovation by existing trading centers and it may attract new entrants and the formation of new trading centers.[410]

ii. Costs

The proposed amendments to Rule 606(a) to require broker-dealers to differentiate between marketable and non-marketable limit orders would impose costs on broker-dealers. Preliminary estimates for compliance costs are contained in the estimates for the costs of producing the reports discussed in Section V.C.2.e.

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 606(a). In particular, the Commission solicits comment on the following:

147. Do commenters believe that the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal are appropriate? Please provide data and analysis to support your view.

148. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

149. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended consequences not discussed above that may result from the proposal?

150. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

b. Net Payment for Order Flow and Transaction Fees and Rebates by Specified Venue

i. Benefits

Under the proposed amendments to Rule 606(a)(1)(iii), for retail orders, broker-dealers would be required to publicly report the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship received, the transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following order types: market orders, marketable limit orders, non-marketable limit orders, and other orders.

Similarly to differentiating marketable and non-marketable limit orders discussed in Section V.C.2.a.i, the information required by proposed Rule 606(a)(1)(iii) could also allow the public, including customers placing retail orders, to better understand the potential conflicts of interest broker-dealers face when routing retail orders.[411] The proposed disclosure of information could provide additional incentives to broker-dealers to monitor the potential conflicts of interest, and to review and alter how they route retail orders, which could result in improved order routing decisions and execution quality for retail orders. The disclosure could also help the public to assess better if and how well broker-dealers manage the potential conflicts of interest they face when routing retail orders.

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[407] *See* proposed Rule 606(a)(1)(iv).

[408] *See* Battalio, Corwin, and Jennings Paper, *supra* note 57.

[409] *See id.*

[410] In particular, a trading center that loses order flow to venues that offer better execution quality would have the incentive to innovate to improve its execution quality. Therefore, because the proposed disclosures may encourage broker-dealers to route for better execution quality, they may lead to innovation on trading centers.

[411] *See supra* Section II.C. for an example of routing decisions being affected by conflicts of interest.

Under proposed Rule 606(a)(1)(iii), broker-dealers would be required to disclose on a quarterly basis more detailed information on net payment for order flow, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received per share and in total. Customers and the public could use this information to gauge whether payments for order flow or maker-taker fees affect the order routing decisions of broker-dealers. For example, if a customer pays a flat-rate commission to its broker-dealer, and any rebate received, or any fraction thereof, is retained by the broker-dealer, then the broker-dealer may have a financial incentive to route the retail order to the trading center offering the highest rebate or lowest fee.[412] Brokerage commissions, which are known to the customer, may depend on the rebates and take fees collected or paid by broker-dealers.[413] For example, broker-dealers that collect more in rebates may pass this income on to customers by charging lower commissions. However, routing solely to maximize rebates or minimize take fees may result in lower execution quality than other routing strategies. Without the proposed disclosures customers might take only brokerage commissions into account and might, therefore, suboptimally choose the lowest commission broker-dealer, without considering other relevant costs. Such customers could, in fact, end up paying higher net costs if the lower commission broker-dealers do not obtain good execution quality for the retail orders. The information required by proposed Rule 606(a)(1)(iii), together with the proposed amendments to Rule 606(a) requiring differentiating of marketable and non-marketable limit orders, would give customers additional information to make decisions based on more than the brokerage commissions.

In addition, as discussed in Section V.C.2.a.i, if broker-dealers improve their order routing for retail orders, which may result in changes to which trading centers they route retail orders to, it could promote competition between trading centers. The trading centers could gauge, like customers, whether payment for order flow or maker-taker fees affect the order routing decision of broker-dealers. The trading centers may change their fees or attempt otherwise to attract retail order flow and the quarterly public reports that are broken down by calendar month would allow them to see effects of any changes they implement. In addition, this may lead to innovation by existing trading centers and it may attract new entrants and the formation of new trading centers.

ii. Costs

Proposed Rule 606(a)(1)(iii) would impose initial costs on broker-dealers in creating a new process to complete the reports and increase ongoing costs related to incorporating additional information into the reports. Preliminary estimates for the compliance costs are contained in the estimates for the costs of producing the reports discussed in Section V.C.2.e. It is possible that increased transparency about the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship, transaction fees paid, and transaction rebates received, and subsequent scrutiny by retail customers, the public, academics, regulators, and the financial media, may lead broker-dealers to decrease the degree to which they internalize orders and route orders to high rebate or low fee exchanges to avoid the perception of conflicts of interest. Broker-dealers might do this if they perceive the potential costs from increased public scrutiny that would result from the enhanced disclosures to be relatively high compared to the benefit from sending retail orders to internalizers or routing retail orders to high rebate and low fee trading centers. If this were to occur then these retail orders might be more likely to be routed to trading centers other than internalizers, such as exchanges or alternative trading systems,[414] regardless of potential execution quality differences such as relatively less price improvement, or they might be more likely to be routed to other lower rebate or higher fee venues, regardless of the potential execution quality differences. In addition, if broker-dealers were to reduce the retail order flow sent to internalizers who pay for it, the broker-dealers would receive less payment for retail order flow and might pass the lost payments onto their retail customers by raising brokerage commissions or other fees. Similarly, if broker-dealers were to route retail orders to trading centers with lower rebates and higher fees, they might pass the reduction in rebate revenue and increase in fee costs on to their retail customers by raising brokerage commissions or other fees.

It is possible that increased transparency about net payment for order flow and payments from profit-sharing relationships, and subsequent scrutiny by retail customers, the public, academics, regulators, and the financial media, might lead broker-dealers to alter their payment for order flow or profit-sharing relationships or not enter such relationships. Broker-dealers might do this if they perceive the potential costs from increased public scrutiny to be relatively high compared to a broker-dealer's benefit from such relationships. This could lead to lower payments received from such relationships. The affected broker-dealers might offset these lower revenues or higher costs by increasing brokerage commissions or other fees for retail customers.

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 606(a)(1)(iii). In particular, the Commission solicits comment on the following:

151. Do commenters believe that the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal are appropriate? Please provide data and analysis to support your view.

152. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

153. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended consequences not discussed above that may result from the proposal?

154. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

c. Discussion of Arrangement Terms With a Specified Venue

i. Benefits

As discussed in Section III.B.3., the proposed amendment to Rule

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[412] *See, e.g.,* Battalio, Corwin, and Jennings Paper, *supra* note 57.

[413] The Commission notes that it does not believe that fees and rebates are the only determinants of brokerage commissions.

[414] *See supra* note 3.

606(a)(1)(iv) would require broker-dealers to describe in their quarterly public report any terms of payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence their order routing decisions, including, among other things: (1) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment; (2) disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee; (3) volume-based tiered payment schedules; and (4) agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue. The Commission preliminarily believes that the description provided by proposed Rule 606(a)(1)(iv) would help ensure consistent, accurate, and comprehensive disclosure of terms of payment for order flow and profit-sharing relationships that influence broker-dealer order routing decisions. This would make the public reports required by amended Rule 606(a) more useful to customers and the public, and the benefits of the description required by proposed Rule 606(a)(1)(iv) are similar to the benefits of the disclosures of the net payment for order flow and transaction fees and rebates by Specified Venue required by proposed Rule 606(a)(1)(iii) and discussed in Section V.C.2.b.i.

The disclosures required by proposed Rule 606(a)(1)(iv) could allow the public, including customers placing retail orders, to better understand the potential conflicts of interest broker-dealers face when routing retail orders.[415] Together with the proposed amendments to Rule 606(a) concerning differentiating marketable and non-marketable limit orders and with proposed Rule 606(a)(1)(iii), proposed Rule 606(a)(1)(iv) could give customers placing retail orders useful information about potential conflicts of interest. The disclosures required by Rule 606(a)(1)(iv) would give customers access to information on the terms of payment for order flow arrangements and profit-sharing relationships between broker-dealers and Specified Venues. Customers could use that information to gauge whether those arrangements affect the order routing decisions of broker-dealers. The proposed disclosures could incentivize broker-dealers to monitor their potential conflicts of interest, and to review and alter how they route retail orders, which could result in improved order routing decisions and execution quality for retail orders. The disclosure could also help the public to assess if and how well broker-dealers manage the potential conflicts of interest they face when routing retail orders.

In addition, as discussed in Section V.C.2.a.i, if broker-dealers improve their order routing for retail orders, which may result in changes to which trading centers they route retail orders to, it could promote competition between trading centers. The trading centers could gauge, like customers, whether payment for order flow arrangements and profit-sharing relationships between broker-dealers and Specified Venues affect the order routing decisions of broker-dealers. The trading centers may change their payment for order flow arrangements and profit-sharing relationships with broker-dealers or attempt otherwise to attract retail order flow and the quarterly public reports that are broken down by calendar month would allow them to see effects of any changes they implement. In addition, this may lead to innovation by existing trading centers and it may attract new entrants and the formation of new trading centers.

ii. Costs

Given that the proposed changes to Rule 606(a)(1)(iv) constitute an amendment to an existing disclosure, the Commission preliminarily estimates the initial paperwork burden for a broker-dealer that handles retail orders to review and assess its payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence their order routing decisions, and describe terms of such arrangements to be 10 hours resulting in a monetized cost burden of $3,155.[416] With 266 broker-dealers that route retail orders required to comply with the rule, the Commission preliminarily estimates the total initial paperwork burden for complying with proposed Rule 606(a)(1)(iv) to be 2,660 hours resulting in a cost of $839,230.[417] The Commission preliminarily estimates the annual paperwork burden for a broker-dealer that handles retail orders to describe and update any terms of payment for order flow arrangements and profit-sharing relationships, whether written or oral, with a Specified Venue that may influence their order routing decisions to be 15 hours resulting in a monetized cost burden of $3,500.[418] With 266 broker-dealers that route retail orders required to comply with the rule, the Commission preliminarily estimates the total annual paperwork burden for complying with proposed Rule 606(a)(1)(iv) to be 3,990 hours resulting in a cost of $931,000.[419]

Increased disclosure about payment for order flow arrangements and profit-sharing relationships may lead broker-dealers to decrease the amount of internalization used in the execution of market and marketable limit orders and to alter such arrangements and relationships. Section V.C.2.b.ii. discusses this in detail and the associated costs and other effects.

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 606(a)(1)(iv). In particular, the Commission solicits comment on the following:

155. Do commenters believe that the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal are appropriate? Please provide data and analysis to support your view.

156. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

157. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended not discussed above consequences that may result from the proposal?

158. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

d. Additional Amendments to Retail Disclosures

In addition to the amendments discussed above, the Commission is proposing to amend disclosures for retail orders by aggregating reports across listing exchanges, requiring quarterly reports to be broken down by month, and providing reports in a specific format that are available for a minimum length of time. The benefits and costs of these additional amendments are discussed below.

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[415] *See supra* Section II.C. for an example of routing decisions being affected by conflicts of interest.

[416] *See supra* note 318.

[417] *See supra* note 319.

[418] *See supra* note 323.

[419] *See supra* note 324.

i. Aggregated Reporting

(a) Benefits

The proposed amendment to Rule 606(a)(1) that requires reports on retail orders be aggregated across all securities may reduce the ongoing costs of the Rule 606(a) reports. Current Rule 606(a)(1) requires that NMS stocks be "divided into three separate sections for securities that are listed on the New York Stock Exchange, Inc., securities that are qualified for inclusion in The Nasdaq Stock Market, Inc., and securities that are listed on the American Stock Exchange LLC or any other national securities exchange." To satisfy this requirement, broker-dealers have to determine the primary listing of all NMS stocks and incur a cost on an ongoing basis in doing so. Eliminating this requirement would save broker-dealers this cost. In addition, new broker-dealers currently have to create the initial report format for the three groups of NMS stocks, which also imposes a one-time cost.[420] Under the proposed amendment, new broker-dealers would not incur that cost.

(b) Costs

The Commission's proposal to aggregate reports on retail order routing across listing exchanges would also impose costs, according to a staff analysis.[421] In particular, the staff analysis indicates that the aggregation across listing exchanges would reduce the value of the 606 reports for monitoring execution quality from broker-dealers because it would make it harder for retail customers to assess the execution quality provided by their broker-dealers. This section describes the staff's analysis.

The staff's analysis focuses on whether customers or others can use the market-specific routing information to assess the execution quality they get from their broker-dealers. Specifically, if the order routing decisions by broker-dealers differ for stocks listed on different exchanges, *e.g.*, if broker-dealers route orders differently for NYSE-listed stocks compared to NASDAQ-listed stocks, the proposed aggregated reports would not provide this information to customers and the public.[422] Such information can be useful for customers and the public as long as order routing decisions determine execution quality and execution costs. Specifically, Commission staff analyzed execution costs as measured by effective spreads from Rule 605 reports ("Rule 605 data") for common stocks with different primary listing exchanges and on different market centers to determine whether the cost of executing a market or a marketable limit order for common stock varies across market centers and primary listing exchange.[423] The staff's analysis controls for stock and order characteristics.[424] Accordingly, the staff's analysis considers whether execution quality depends on primary listing exchanges, and specifically which market centers provide better execution, as a means to assess whether the proposal might reduce the usefulness of the reports.[425]

While the staff's analysis is not a direct test of whether order routing differs for stocks with different primary listing exchanges,[426] it does directly measure one important factor in whether such routing information would be useful—differences in execution costs. Information on both execution costs and routing allows customers (or someone acting on behalf of customers) to assess the extent to which their broker-dealer routes customer orders to the market centers with the lowest execution costs. If the execution cost measures show that listing exchange matters for which market centers offer better execution quality, then aggregating the routing information across listing exchanges could reduce the ability for customers to assess one of the components of best execution. Hence, the staff's analysis provides some indication of whether aggregated reporting, as required by the proposed amendment, would deprive customers and the public of useful information regarding the impact of routing decisions.

TABLE 1—ASSOCIATION BETWEEN TRADING CENTER AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS BY LISTING EXCHANGE

	Mean effective spread (basis points)		
	(1)	(2)	(3)
	NYSE-listed	NASDAQ-listed	NYSE MKT-listed
Intercept	*** 18.02 (227.48)	*** 92.01 (412.45)	*** 177.29 (122.39)
BATS BYX	*** −4.12 (−48.43)	*** −35.78 (−141.56)	*** −37.58 (−20.35)
BATS BZX	*** −7.04 (−77.28)	*** −40.70 (−161.74)	*** −50.60 (−31.87)
BX	*** −1.31 (−14.26)	*** −29.21 (−107.52)	*** −34.06 (−19.01)
CBSX	*** 1.12 (8.76)	*** −17.02 (−41.94)	*** 14.94 (4.70)
CHX	*** −2.27 (−10.93)	*** −37.72 (−43.53)	*** −21.04 (−2.90)
EDGA	*** −4.69 (−55.75)	*** −35.49 (−131.77)	*** −41.53 (−25.03)
EDGX	*** −4.28 (−48.53)	*** −27.64 (−96.80)	*** −29.09 (−15.71)

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[420] NYSE Arca, Inc. ("NYSE Arca") and Bats BZX are also listing exchanges but only for exchange traded funds not stocks.

[421] In addition, this proposed amendment would impose an initial cost for broker-dealers who currently capture the data required by the proposed modification to Rule 606(a) to change the process for preparing the reports. These costs are reflected in the cost estimates discussed in Section V.C.2.e.

[422] The Commission notes that there are differences in order routing decisions depending on primary listing exchange due to existing rules, regulations, and practices. For example, the NYSE does not trade NASDAQ- or NYSE MKT-listed stocks. As a result, orders for a NYSE-listed stock can be routed to the NYSE, NASDAQ, and other market centers, whereas orders for NASDAQ-listed stocks can be routed to NASDAQ and other market centers, but not to the NYSE. This level of information would be lost in aggregated reports.

[423] The Commission purchased the Rule 605 data from CoreOne Technologies, a provider of financial data. The data used in this analysis spans the period from January 1, 2012 through December 31, 2014. The CRSP US Stock Database from Wharton Research Data Services contains daily and monthly market and corporate action data for securities, and is used to estimate control variables.

[424] Specifically, the analysis consists of a regression that uses dollar volume, market capitalization, and mean variance of daily returns to control for stock characteristics, and order type and order size to control for order characteristics.

[425] Similarly, if any of the information required to be disclosed by proposed Rules 606(a)(iii) and (iv) differs for stocks with different listing exchanges, then the proposed aggregation will reduce the information content of the reports, provided that information is valuable to institutions as discussion in Section II.C. For example, it may be the case that payment for order flow arrangements are different for stocks with different primary listing exchanges or an exchange may implement different fees and rebates for stocks with a different primary listing exchange.

[426] Commission staff was unable to obtain historical quarterly reports for retail orders required by current Rule 606(a). Therefore, the Commission staff did not analyze current 606 reports to see if routing differs by listing exchange of the stock.

TABLE 1—ASSOCIATION BETWEEN TRADING CENTER AND MEAN EFFECTIVE SPREAD FOR COMMON STOCKS BY LISTING EXCHANGE—Continued

	Mean effective spread (basis points)		
	(1)	(2)	(3)
	NYSE-listed	NASDAQ-listed	NYSE MKT-listed
NASDAQ	*** 1.63 (17.33)		** 3.98 (2.53)
NSX	*** −2.85 (−28.76)	*** −37.17 (−118.44)	*** −41.72 (−22.17)
NYSE ARCA	*** −5.75 (−70.19)	*** −36.71 (−152.46)	*** −48.49 (−30.82)
NYSE MKT		*** −57.02 (−113.92)	
Off Exchange	*** −3.08 (−43.57)	*** −31.85 (−168.35)	*** −34.54 (−26.76)
PSX	*** −3.10 (−39.77)	*** −57.54 (−256.34)	*** −81.01 (−54.98)
Marketable limit order	−0.004 (−.11)	*** 2.90 (28.78)	*** −10.83 (−15.95)
500–1,999 shares	*** 0.67 (15.32)	*** −2.32 (−21.67)	* −1.23 (−1.87)
2,000–4,999 shares	*** 2.22 (44.37)	*** −3.31 (−26.89)	** 1.87 (2.37)
≥5,000 shares	*** 3.41 (61.79)	*** −4.23 (−28.66)	*** 2.98 (3.12)
Dollar volume	*** −2.86E–08 (−178.5)	*** 2.21E–09 (11.38)	−3.04E–08 (−1.49)
Market capitalization	*** 8.03E–12 (12.49)	*** −3.65E–10 (−121.35)	*** −1.96E–08 (−57.69)
Variance of daily return	*** 334.54 (21.14)	*** 438.14 (11.66)	*** 877.18 (11.53)
H_0: All exchange dummies = 0			
Chi-square	*** 17,580	*** 75,339	*** 6,346
H_0: EDGX = Bats BYX			
Chi-square	** 4.13	*** 806.78	*** 18.70
Observations	9,792,105	10,764,324	688,305
Adjusted R^2	1.02%	1.18%	1.98%
Year fixed effects	Yes	Yes	Yes

Note: Data are SEC Rule 605 data purchased from CoreOne Technologies and CRSP, and include years 2012–2014. The mean effective spread is equally-weighted by stock. The variable categories that are dropped are: One trading center, market orders (for the regressions involving mean effective spreads), inside-the-quote limit orders (for regressions involving mean realized spreads), order size from 100–499 shares, and the 2012 calendar year. The Chi-square test is used to test the null hypothesis that all of the exchange coefficients, with the exception of the intercept coefficient, are jointly zero. The null hypothesis would imply that all exchanges would not be associated with a mean effective spread different from that associated with NYSE-listed stock orders executed at NYSE. T-statistics estimated from White standard errors are in parentheses. * indicates significance of a 2-tailed test at the 10% level; ** at the 5% level; *** at the 1% level.

Table 1 presents the results of the staff's analysis of effective spreads for common stocks listed on the NYSE, NASDAQ, and NYSE MKT. Columns 1 through 3 report the results for each of these primary listing exchanges.[427] The market center rows in the table report the basis point difference between the average effective spreads on that market center and the average effective spreads on the primary listing exchange. In tests of whether effective spreads of each market center are the same as the listing exchange, the rows with stars indicate that the market center effective spreads are statistically significantly different, with more stars indicating stronger confidence in the significance. For illustration, the intercept in Column 1 indicates that the average effective spread for market orders for NYSE-listed stocks that are executed on the NYSE is 18.02 basis points and the −4.12 estimate for Bats BYX Exchange, Inc. ("Bats BYX") indicates that the effective spreads for NYSE-listed stocks on Bats BYX are 4.12 basis points lower after controlling for differences due to stock and order characteristics.[428]

Table 1 indicates that the average effective spreads vary significantly by the market center where the orders were executed. Table 1 shows that most market center effective spreads are significantly different than those of the listing exchange. For example, Column 1 shows that, for NYSE-listed stocks, the average effective spread on Bats BZX is 7.04 basis points less than on the NYSE itself, and the average effective spread on NASDAQ is 1.63 basis points higher than on the NYSE. In addition, some differences in effective spreads are also economically meaningful. For example, Column 2 reports that the average effective spread for orders in NASDAQ-listed stocks that are executed on NASDAQ is 92.01 basis points and the average effective spread for such orders that are executed on NYSE Arca is 36.71 basis points lower, which corresponds to a 55.3 basis point difference and represents a reduction of almost 40%.[429] Differences of such magnitude may be important to broker-dealers when making order routing decisions and to customers in monitoring the execution quality their broker-dealers provide as measured by the current Rule 605 reports.

Table 1 also indicates that the average effective spreads vary significantly by listing exchange. The staff's analysis suggests that NASDAQ-listed stocks tend to have higher average effective spreads than NYSE-listed stocks because the intercept estimates are much larger in Column 2 compared to Column 1.[430] Table 1 also shows that NYSE MKT-listed stocks tend to have even higher average effective spreads than NASDAQ-listed stocks by comparing the results in Column 3 with those in Column 2. The Commission notes that neither this result alone nor this result in conjunction with the results in the previous paragraph directly measure whether the proposed amendment would reduce the usefulness of the Rule 606 routing information.

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[427] The Rule 605 data and, thus, this analysis weight the effective spread statistics equally by stock. Therefore, these effective spreads appear larger than if they were weighted by dollar volume or by share volume.

[428] For perspective, a one penny effective spread on a $40 stock is 2.5 basis points. A 2.5 basis point cost on a 100 share trade in a $40 stock would be $1.00. An ordinary least squares estimate is consistent when the explanatory variables are exogenous, perfect multicollinearity does not exist, and optimal in the class of linear unbiased estimators when the errors are homoscedastic and serially uncorrelated. Under these assumptions, the method of ordinary least squares provides minimum-variance mean-unbiased estimates when the errors have finite variances. If any one or more of these assumptions does not hold then the estimate may not be the best linear unbiased estimator.

[429] 36.71/92.01 = 39.9%.

[430] The Commission recognizes that the staff analysis did not control for stock and order characteristic differences across the columns and the staff did not estimate a matched-sample comparison. These other analysis types would facilitate a more fulsome comparison of effective spreads in similar stocks by listing exchange than the staff's analysis in Table 1. However, because the 606 reports do not distinguish individual stocks, the Commission preliminarily believes that the staff analysis is appropriate for assessing the costs of the proposed amendments.

However, a deeper analysis of Table 1 can inform on these costs. Specifically, the results in the table suggest that because the relative ranking of each market center changes depending on the listing exchange, the proposed amendment to aggregate routing information across listing exchanges could reduce the usefulness of Rule 606 reports. Commission staff compared the effective spreads across the various market centers for stocks listed on each of the primary listing exchanges, as indicated by Table 1.

If the ranking of the effective spreads on each market center were the same across the three primary listing exchanges, where a stock is listed would have little or no relationship to whether order routing information informs on execution quality. Such a result would imply that aggregating the reports across primary listing exchanges would not reduce the amount of information in the reports. However, upon examination, Table 1 shows that the ranking of the market centers by effective spreads is different depending on the primary listing exchange. For example, the coefficient estimates in Table 1 suggest that for NYSE-listed stocks, Bats EDGX Exchange, Inc. ("EDGX") has lower execution costs than Bats BYX, but for NASDAQ-listed stocks, EDGX has higher execution costs than Bats BYX. In Column 1 for NYSE-listed stocks, the differential cost of trading a stock on EDGX versus Bats BYX is small, 0.17 basis points, but statistically significant. However, in Column 2 for NASDAQ-listed stocks, the stocks differ in cost by a statistically significant 8.14 basis points between the same two exchanges. This indicates that there seem to be differences between market centers in terms of effective spreads for stocks with different primary listings that, together with routing information by listing exchange, may inform customers in assessing the execution quality their broker-dealers provide. Therefore, the staff's analysis indicates that aggregating the reports, as in the proposed amendment, could result in an informational cost to customers and the public.

As noted above in Section III.B.4., while the Commission recognizes that eliminating the division of reports by the three distinct listing markets may potentially cause some reduction in informational content, as indicated in the analysis above, the Commission preliminarily believes that any diminution in granular listing market data is appropriate in light of the proposed requirement to provide retail customers with pertinent order routing data that reflects today's multiple trading centers and practices. The Commission solicits comment on the foregoing.

ii. Other Proposed Amendments to Reporting

The Commission is also proposing to require that the quarterly public retail order routing reports required by Rule 606(a)(1) be broken down by calendar month. Current Rule 606(a)(1) requires broker-dealers to make retail order routing reports publicly available for each calendar quarter, and such reports contain aggregate quarterly information on the routing of retail orders. As noted above, the Commission understands that trading centers frequently change their fee structures, including the amount of fees and rebates, in order to attract order flow, and these changes typically occur at the beginning of a calendar month. The changes in fee structures at trading centers likely will affect a broker-dealer's routing decisions. Disclosing retail order routing information on an aggregated quarterly basis can mask changes in routing behavior in response to changes in a trading center's fee structure. The Commission preliminarily believes that disclosing the information contained in the public retail routing reports by calendar month would allow customers to better assess whether their broker-dealers' routing decisions are affected by changes in fee structures and the extent to which such changes affect execution quality. This proposed amendment would, however, require an initial cost to change the process for completing the reports. The Commission preliminarily believes this cost to be small because broker-dealers typically process data daily and reporting the data broken down by month would only be a change in the aggregation of the data, from quarterly to monthly.

In addition, the Commission is proposing that the public retail order routing report required by Rule 606(a)(1) and customer-specific order routing report required by Rule 606(b)(1) be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site. The benefits and costs associated with this requirement are discussed in Section V.C.4. The Commission preliminarily believes that requiring both the public and customer-specific retail order routing reports to be provided in this format should be useful to customers as it would allow them to more easily analyze and compare the data provided in both types of reports across broker-dealers, for the reasons discussed above.[431] The proposed amendments to Rule 606(a)(1) and Rule 606(b)(1) would require an initial cost to change the process for completing the reports.[432] The benefits and costs associated with this requirement are discussed in further detail in Section V.C.4.

Finally, the Commission is proposing to amend Rules 605(a)(2) and 606(a)(1) to require market centers and broker-dealers to keep the reports posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years. Requiring that data be available to customers and the public for three years could be useful to those seeking to analyze past execution quality by market center and routing behavior of broker-dealers. Such analysis may lead to increased transparency with regards to execution quality and may lead broker-dealers to compete along this dimension through routing decisions, resulting in a higher probability of execution and improved execution in terms of costs. Current Rules 605 and 606 do not specify the minimum length of time that market centers need to publish the order execution reports and broker-dealers need to publish the retail order routing reports, respectively. As a result, the public may not be able to examine the order execution of a market center and the routing of retail orders by a broker-dealer through time if past reports are not currently available or they have to rely on third-party vendors to supply past reports.

The requirement to make the reports available for three years may also produce costs. As noted above, however, the Commission preliminarily believes that, once the report is posted, maintaining the reports on the Web site will not pose any additional burden on broker-dealers, and thus any additional costs to maintain the report on the Web site would be negligible. Any costs of maintaining the report are included in the Commission's estimates of the costs broker-dealers will incur to produce the reports, as explained above.[433] In addition, third-party vendors that aggregate the time series of 605 and 606 reports may find that their data is less useful, particularly for the three years that the reports are publicly available.

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[431] *See supra* Section III.A.3.

[432] The benefits and costs associated with this requirement more generally are discussed in Section V.C.4.

[433] *See infra* Section V.C.1.c.ii.

iii. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 605(a)(2), 606(a)(1) and 606(b)(1). In particular, the Commission solicits comment on the following:

159. Do commenters believe that the assumptions underlying the Commission's estimates for the costs of implementation and ongoing costs to comply with the proposal are appropriate? Please provide data and analysis to support your view.

160. Do commenters believe there are additional costs or benefits that could be quantified or otherwise monetized? If so, please identify these costs and benefits. Please explain and provide specific data and estimates.

161. Do commenters believe there are any additional costs or benefits that may arise from the proposal? Are there costs and benefits described that would likely not result from the proposed amendments? Are there any unintended consequences that may result from the proposal?

162. Do commenters believe that there are methods by which the Commission could reduce the costs imposed by the proposal, while still achieving its stated goals? Please explain in detail.

e. Compliance Costs for Retail Order Routing Reports

As discussed in more detail in Section IV.D.4., the Commission preliminarily estimates the costs to comply with the proposed amendments to Rule 606(a) that require broker-dealers to distinguish between marketable and non-marketable limit orders and with proposed Rule 606(a)(1)(iii) that requires disclosure of net payment for order flow and transaction fees and rebates by Specified Venue as follows. The Commission preliminarily estimates that most of the 266 broker-dealers that route retail orders already obtain the information required by the proposed rule and that 50 broker-dealers do not currently obtain such information. The Commission preliminarily estimates that the initial burden for a broker-dealer who routes retail orders to update its systems to capture the information required by proposed Rule 606(a) and format that information into a report to comply with the rule will be 80 hours resulting in a cost of $22,648.[434] The Commission preliminarily estimates that 25 broker-dealers whose systems do not currently capture all of the information required by proposed Rule 606(a) will engage a third-party service provider to perform the necessary upgrades. The Commission preliminarily estimates that the initial burden for a broker-dealer that routes retail orders to engage a third-party to perform the necessary system updates to comply with proposed Rule 606(a) will be 20 hours resulting in a monetized cost burden of $5,985 plus an additional third-party service provider fee of $10,000.[435] Therefore, the Commission preliminarily estimates the total initial burden for all 50 broker-dealers who need to update their systems and create a new report to be 2,500 hours resulting in a monetized cost burden of $715,825 plus an additional $250,000 fee to the third-party service providers.[436]

For the remaining 216 broker-dealers who the Commission preliminarily estimates currently capture the data required by the proposed modifications to Rule 606(a), such broker-dealers would need only to format their reports to incorporate such data. The Commission preliminarily estimates for broker-dealers that already capture such data, 108 would format the reports in-house. The cost to format that data into its existing reports in-house is preliminarily estimated to be 20 hours resulting in a monetized cost burden of $4,975.[437] The Commission preliminarily estimates that 108 broker-dealers currently engage a third-party service provider to provide reports pursuant to existing Rule 606(a) and such broker-dealers would continue to use third-party service providers to format reports to comply with proposed Rule 606(a). The Commission preliminarily estimates the initial burden for a broker-dealer who engages a third-party service provider to format reports to comply with proposed Rule 606(a) would be 8 hours resulting in a monetized cost burden of $2,555 plus an additional fee of $2,000.[438] As such, the Commission preliminarily estimates that the total cost for the 216 broker-dealers who the Commission preliminarily estimates currently capture the data required by proposed Rule 606(a) to format their reports to incorporate such data to be 3,024 hours resulting in a monetized cost burden of $813,240 plus an additional $216,000 third-party service provider fee.[439] Therefore, the Commission preliminarily estimates that the total initial burden to comply with Rule 606(a) for all 266 broker-dealers which the Commission preliminarily estimates route retail orders is 5,524 hours resulting in a monetized cost burden of $1,529,065 plus an additional fee of $466,000 to third-party service providers.[440]

The Commission preliminarily believes that once the initial costs, described above, have been incurred to allow a broker-dealer to obtain the required information, the cost to produce a quarterly report would remain the same compared to a quarterly report required under current Rule 606(a).[441] However, broker-dealers would need to monitor payment for order flow or profit-sharing relationships and potential SRO rule changes that could impact their order routing decisions and incorporate any new information into their reports. Thus, the Commission preliminarily estimates the annual burden for a broker-dealer to comply with the proposed amendments to Rule 606(a)(1)(i)–(iii) to be 10 hours resulting in a monetized cost burden of $3,155.[442] With 266 broker-dealers that route retail orders required to comply with the proposed amendments, the Commission preliminarily estimates the total annual burden to be 2,660 hours resulting in a monetized cost burden of $839,230.[443]

i. Request for Comment

The Commission requests comment on the Commission's discussion of implementation considerations of the proposed amendments in Rules 606(a)(1) and 606(b)(1). In particular, the Commission solicits comment on the following:

163. Do commenters agree with the Commission's estimates of the costs to comply with the proposed amendments in Rules 606(a)(1) and 606(b)(1) for retail orders? Specifically, do commenters agree with the Commission's estimates for initial costs and for ongoing costs? Please be specific in your response and provide data to support your response.

3. Disclosure of Order Execution Information

The proposed amendment to Rule 605(a)(2) requires market centers to keep reports required pursuant to Rule

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[434] *See supra* note 299.

[435] *See supra* notes 301 and 302.

[436] *See supra* notes 304 and 305.

[437] *See supra* note 306.

[438] *See supra* notes 308 and 309.

[439] *See supra* notes 312 and 313.

[440] *See supra* notes 314 and 315.

[441] *See supra* Section IV.D.4.b.

[442] *See supra* note 321.

[443] *See supra* note 322.

605(a)(1) posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

a. Benefits

Similar to the analogous requirements proposed in Rules 606(a) and 606(c) described above, the Commission preliminarily believes that requiring the previous three years of past order execution information to be available to customers and the public generally should be useful to those seeking to analyze historical order execution information at various market centers. Currently, customers and the public who want to analyze historical order execution information have to either download the data every quarter or they have to rely on third-party vendors to get access to such data. The proposed requirement to make the data readily accessible to the public for three years would allow customers and the public to access and analyze historical order execution information more easily by requiring that historical data are kept posted by the market centers. The public includes other market participants. For example, the proposed requirement to make the data readily accessible to the public for three years would benefit broker-dealers, market centers, and third-party vendors in that it would allow them to access and analyze historical order execution information more easily. This would allow broker-dealers to compare different market centers more easily, market centers to compare themselves to other market centers more easily, and third-party vendors to provide their services based on the data more easily.

b. Costs

The Commission preliminarily believes that the costs to market centers for making the order execution reports readily accessible to the public for a period of three years from the date of initial publication are negligible as it amounts to posting the currently-required reports for the three-year time period. In addition, some market centers may already make their reports available to the public for an extended period of time. The requirement to post and maintain reports on an Internet Web site that is free of charge and readily accessible to the public for a period of three years would begin at the adoption of the proposed amendments to Rule 605(a)(2) and apply going forward. Affected entities (the market centers) would not be required to post reports created and posted prior to the proposed Rule's effectiveness.

The Commission notes that specifying a minimum length of time for making the Rule 605 reports available may make the data owned by third-party vendors aggregating the time series of 605 reports less useful because, for three years, the data would be publicly available and more easily accessible.

c. Request for Comment

The Commission requests comment on the Commission's analysis of the costs and benefits of the proposed amendments in Rule 605(a)(2). In particular, the Commission solicits comment on the following:

164. Do commenters believe that there are benefits to making order execution reports readily available for three years? If so, please explain.

165. Do commenters agree with the Commission's analysis that the costs are negligible? Why or why not?

4. Structured Format of Reports

The Commission is proposing to require that the retail order routing and institutional order handling reports be made available using the Commission's XML schema and associated PDF renderer. As discussed earlier, the Commission preliminarily believes that requiring the reports to be made available in an XML format will facilitate enhanced search capabilities, and statistical and comparative analyses across broker-dealers and date ranges.[444] In addition, the associated PDF renderer would provide users with an instantly human-readable format for those who prefer to review manually individual reports, while still providing a uniform presentation.

The Commission understands that there are varying costs associated with varying degrees of structuring. Most, if not all, broker-dealers already have experience applying the XML format to their data. For example, all FINRA members must use FINRA's Web EFT system, which requires that all data be submitted in XML.[445] For the end users, with the data in the reports structured in XML, they could immediately download the information directly into databases and analyze it using various software. This would enhance their ability to conduct large-scale analysis and immediate comparison of broker-dealers, and across date ranges. Moreover, as an open standard, XML is widely available to the public at no cost.

The Commission also preliminarily believes that if the reports are provided in a structured format, users could avoid costs associated with third-party sources who might otherwise extract and structure the data, and then charge for access to that structured data. Users could also avoid the additional time it would take for them to manually review and individually structure the data if they wanted to conduct large-scale analysis, comparison, or aggregation.

The XML schema would also incorporate certain validations to help ensure consistent formatting among all reports, in other words, to help ensure data quality. Validations are restrictions placed on the formatting for each data element so that comparable data is presented comparably. However, these validations would not be designed to ensure the underlying accuracy of the data. Any reports made available by broker-dealers pursuant to the proposal would have to comply with validations that are incorporated within the XML schema, otherwise the reports would not be considered to have been made available using the most recent version of the Commission's XML schema.

XML is an open standard that is maintained by an organization other than the Commission and undergoes constant review. As updates to XML or industry practice develop, the Commission's XML schema may also have to be updated to reflect the updates in technology. In those cases, the supported version of the XML schema would be made available on the Commission's Web site and the outdated version of the schema would be removed in order to maintain data quality and consistency with the standard.

The Commission considered alternative formats to XML, such as comma-separated values ("CSV") and XBRL. The Commission does not believe the CSV format is suitable because it does not lend itself to validations. As a result, the data quality of the reports would likely be diminished as compared to XML, impairing comparability, aggregation, and large-scale analysis. While the XBRL format enables users to capture the rich complexity of financial information presented in accordance with U.S. Generally Accepted Accounting Principles, XBRL is not necessary to accurately capture the information for the proposed reports. The Commission preliminarily believes the simpler characteristics of the information in the required reports are better suited for XML.

a. Request for Comment

The Commission requests comment on the Commission's analysis of the proposed structured format for the proposed reports. In particular, the Commission solicits comment on the following:

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[444] *See supra* Section III.A.3.

[445] *See http://www.finra.org/industry/web-crd/web-eft-schema-documentation-and-schema-files.*

166. Should the Commission require a structured format other than XML? If so, please identify the other format; identify how the other format could be used for aggregation, comparison, and large-scale analysis; and identify how the Commission can similarly ensure data quality.

167. As proposed, the public reports will be made available on each broker-dealers' Web site. Are there any benefits to the public or to broker-dealers if the reports were also submitted to the Commission's EDGAR system? If so, please identify those benefits and any associated costs.

168. How and in what format do broker-dealers currently provide their reports for retail orders required by Rule 606(a)(2)?

169. Broker-dealers currently provide reports about order routing and execution quality to institutional customers upon request on a voluntary basis. How and in what format do broker-dealers currently provide those ad-hoc reports?

170. Market centers publish current Rule 605(a) reports in a pipe-delimited ASCII format. Should the Commission require a different structured format for the reports required by Rule 605(a)? Why or why not? If yes, should the Commission require that the reports required by Rule 605(a) be made available using an XML schema and associated PDF renderer published on the Commission's Web site? Why or why not? Please be specific in your response. If commenters believe another format would be more appropriate, please identify the other format and identify how the other format can also be used for aggregation, comparison, and large-scale analysis; and identify how the Commission can similarly ensure data quality. Please identify any benefits and associated costs.

5. Other Definitions in Proposed Amendments to Rule 600

a. Definition of Non-Marketable Limit Order in Proposed Rule 600(b)(51)

Proposed Rule 600(b)(51) defines a non-marketable limit order to mean any limit order other than a marketable limit order. The Commission preliminarily believes that proposed Rule 600(b)(51) would ensure consistent and correct interpretation and application of the proposed amendments to Rule 606(a)(1) for retail orders. The Commission also preliminarily believes that there are no costs associated with proposed Rule 600(b)(51) because it is a definition that is widely used by market participants.

b. Definitions of "Orders Providing Liquidity" and "Orders Removing Liquidity" in Proposed Rule 600(b)(55) and (56)

Proposed Rule 600(b)(55) defines "orders providing liquidity" to mean orders that were executed against after resting at a trading center. Proposed Rule 600(b)(56) defines "orders removing liquidity" to mean orders that were executed against resting trading interest at a trading center. The Commission preliminarily believes that proposed Rules 600(b)(55) and (56) would ensure consistent and correct interpretation and application of proposed Rule 606(b)(3) for institutional orders. The Commission also preliminarily believes that there are no costs associated with proposed Rules 600(b)(55) and (56) because the Commission understands that the two definitions are widely used by market participants.

c. Request for Comment

The Commission requests comment on the Commission's analysis of the proposed definitions. In particular, the Commission solicits comment on the following:

171. Do commenters agree with the definitions? If not, please provide alternative definitions and describe the benefits and costs of those alternatives as compared to the proposed definitions. Please be specific.

172. Do commenters agree with benefits and costs of the proposed definitions as described by the Commission? Please be specific.

173. Do commenters believe that the proposed definitions are widely used and accepted by market participants? Please be specific.

D. Alternatives Considered

1. Definition of Institutional Order in Proposed Rule 606(b)(31)

The Commission considered one alternative to the proposed definition of institutional order in Rule 600(b)(31) that would specify different thresholds for NMS stocks based on trading volume. This alternative would more finely tailor the definition for different types of NMS stocks, as described in Section V.C.1.a.ii. However, this alternative approach would add complexity to the proposed definition, and analysis of data on orders from institutions does not indicate any natural breakpoints.[446] The absence of natural breakpoints makes it more difficult to draw definitive conclusions about what thresholds, if any, would be appropriate in a definition.

In addition to the concern that the threshold of a market value of at least $200,000 may not capture large (measured by shares) orders in illiquid NMS stocks, Section V.C.1.a.ii. also discusses the incentives that market participants may have to change their behavior as stock prices may change over time, which may affect the proportion of orders that fall under the proposed definition of institutional order.

The Commission considered another alternative to the definition in proposed Rule 600(b)(31) that would address both concerns. The alternative would be to have customers identify their orders as institutional orders subject to Rule 606. This alternative approach would address the issue of having the same thresholds for all NMS stocks, independent of the trading volume of the stocks. Since this approach would require each customer to identify institutional orders, there would be a risk that customers may apply different criteria in identifying institutional orders. To the extent broker-dealers receive institutional orders that take different approaches, the usefulness of the reports for the purpose of comparing broker-dealers would be lower than with a consistently applied definition. However, the Commission notes that the alternative of allowing institutions to identify their orders as institutional orders would not reduce the usefulness of the information if the public reports contained specified thresholds as in the proposal. This alternative may not be significantly more costly for broker-dealers to implement than the proposal. After identifying the orders to be included in the calculations, all calculations would be the same for the alternative as for the proposal. On the other hand, if the alternative requires a specified threshold for disclosure on public reports, the public reports would require separate processing because they would involve calculations on different underlying orders. In this case, the alternative would be more costly than the proposal.

2. Limited or No Public Disclosure of Institutional Order Routing and Execution Quality (Proposed Rule 606(c))

The Commission considered requiring broker-dealers to make publicly available only a subset of the information on institutional order handling required by proposed Rule 606(c). For instance, order routing and execution could be disclosed, but not information on orders providing liquidity or orders removing liquidity. Although this alternative would enhance the quality of the disclosure provided by broker-dealers relative to the disclosure under current Rule 606, which does not apply to institutional orders, it would shed less light on how order routing affects execution quality and, thus, provide less information on the potential for conflicts of interest relative to proposed Rule 606(c). As such, the benefits that would be achieved by this alternative are smaller relative to the benefits proposed Rule 606(c) would offer. Additionally, the Commission preliminarily believes that the costs to broker-dealers of this alternative would only be marginally less expensive in than proposed Rule 606(c), because a process would still be required to create the report.

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[446] *See* Section V.C.1.a.ii. for a discussion of Commission staff analysis of a set of orders from institutional customers.

The Commission also considered not requiring broker-dealers to make publicly available any of the information required by proposed Rule 606(c) (but still proposing to require disclosure pursuant to the amendments to Rule 606(b)(3) regarding customer requests for institutional order handling information). As for limited public disclosure just discussed, this alternative would improve the quality of the disclosure provided by broker-dealers relative to the disclosure under current Rule 606, but it would shed even less light on how order routing affects execution quality and thus provide even less information on the potential for conflicts of interest relative to proposed Rule 606(c). As such, the benefits that would be achieved by this alternative would not only be smaller relative to the benefits proposed Rule 606(c) would offer, but also smaller relative to the benefits of the alternative of limited public disclosure. The alternative of no public disclosure would result in cost savings compared to proposed Rule 606(c) because the process to create the public report would not be required under this alternative.

3. More Frequent Public Disclosure of Institutional Order Routing and Execution Information (Proposed Rule 606(c))

The Commission considered requiring broker-dealers to make the aggregated public disclosure of their institutional order routing and execution information available on a more frequent basis than in proposed Rule 606(c) (*i.e.*, monthly rather than quarterly). This alternative would increase the frequency of order routing and execution disclosure, but at an additional cost to broker-dealers relative to proposed Rule 606(c). Specifically, additional costs would accrue from creating and disseminating the reports more frequently than quarterly. Monthly public reports as compared to quarterly public reports would result in having to run the production process to create and disseminate the reports twelve rather than four times per year.

The Commission preliminarily estimates that each broker-dealer that routes institutional orders will incur an average burden of 10 hours resulting in a cost of $1,600 [447] to prepare and disseminate a quarterly report required by proposed Rule 606(c).[448] The Commission preliminarily believes that the costs for a monthly report would be similar to the costs of a quarterly report. Hence, the Commission preliminarily estimates that each broker-dealer that routes institutional orders would incur an average burden of 120 hours resulting in a cost of $19,200 per year to prepare and disseminate monthly reports. This compares to a burden of 40 hours resulting in a cost of $6,400 per year for quarterly reports as required by proposed Rule 606(c), that is, the costs for each broker-dealer that routes institutional orders would be three times higher. The Commission preliminarily estimates the costs to produce a report would remain the same each month, as the cost of the report is more related to the act of producing the report, as opposed to how much data the report contains (one month vs. three months). The difference in costs for each broker-dealer to provide monthly reports as compared to quarterly reports as required by proposed Rule 606(c) is preliminarily estimated to be $12,800 per year.[449] With an estimated 200 broker-dealers that route institutional orders, the total additional burden per year to comply with a monthly reporting requirement as compared to a quarterly reporting requirement as in proposed Rule 606(c) is preliminarily estimated to be 16,000 hours resulting in a cost of $2,560,000.[450]

More frequent reports compared to the proposed quarterly frequency, although broken down by month, would have the benefit of providing the public with information that is more timely. However, the Commission preliminarily believes that the value of having monthly rather than quarterly reports is small because the Commission understands that analysis of order handling data generally is based on data comprising more than one month. While this may be, at least partially, due to the fact that current Rule 606 requires quarterly reports, staff experience suggests that the analysis of order handling data would be based on more than one month of data even if data were available at a higher frequency. This is because order handling data are inherently noisy and a large sample size is necessary to ensure a robust analysis. To that extent, from staff experience, the Commission understands that data spanning several months or even years are used in the analysis of order handling data. The Commission notes that using data spanning several months or even years does not preclude analyzing the data for trends, especially recent trends.[451]

In addition, more frequent disclosure could allow sensitive trading information to be disclosed. For example, as discussed earlier, if a customer placing large institutional orders primarily engages one broker-dealer and that broker-dealer has few, if any, other customers placing significantly sized institutional orders, then other market participants may be able to decipher the customer's trading interest, particularly if the customer is building up or selling off a large position over a longer period of time. The risk of such disclosure of sensitive trading information is greater for monthly reporting frequency compared to the proposed quarterly frequency because, by construction, quarterly reporting provides the data for the first two months in the quarter with a delay compared to if the data for those two months were to be released monthly. As a result, it is less likely that data for those two months contain information about a customer's current and ongoing trading interests.

4. Automatic Provision of Customer-Specific Institutional Order Handling Report (Proposed Rule 606(b)(3))

The Commission considered an alternative to proposed Rule 606(b)(3) that would not require that customers request customer-specific standardized reports on institutional order handling, but would instead require broker-dealers to provide them to customers automatically, either by sending the reports out or by providing a portal where customers can view or download the reports. The alternative could reduce the cost to customers, compared to both the baseline and the proposal, of acquiring the institutional order handling reports, because customers would not need to request the reports. At the same time, it is difficult to determine whether there is any additional benefit to customers compared to the proposal. It is possible that not all customers would use the reports provided to them, and under the proposal, those customers that see enough value in the reports would incur the cost of requesting them.

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[447] *See supra* note 266.

[448] *See supra* Section IV.D.2.d.

[449] $19,200 annually per broker-dealer for monthly reports—$6,400 annually per broker-dealer for quarterly reports = $12,800 annually per broker-dealer.

[450] 80 hours more annually per broker-dealer that routes institutional orders × 200 broker-dealers that route institutional orders = 16,000 hours. The Commission preliminarily estimates the total monetized burden for this requirement to be $2,560,000 ($12,800 more annually per broker-dealer that routes institutional orders × 200 broker-dealers that route institutional orders = $2,560,000).

[451] One way to analyze the data for trends would be to look at subsamples within the full sample. For example, one could consider quarters within a full calendar year of data. Another way would be to employ a rolling window. For example, one could use a twelve-month rolling window, that is, the analysis would use data comprising twelve months of data and then replace the oldest data with more recent data one month at a time.

With respect to the costs to broker-dealers, the alternative would impose additional initial costs compared to the baseline, as the broker-dealers would be required to automatically provide reports to all customers, not just those that request reports, and would have to build infrastructure to generate these reports. The Commission preliminarily believes, however, that the alternative would involve slight modifications to the systems that produce the institutional order handling reports and thus preliminarily believes that these initial costs likely would be minimal.

The effect of this alternative on the costs to broker-dealers, compared to the proposal, is unclear. On the one hand, the Commission preliminarily believes the alternative could impose additional, albeit minimal, initial costs associated with developing systems to automatically generate the reports compared to the proposal as well as to the baseline, as described above. On the other hand, the Commission preliminarily believes the alternative could avoid the initial costs associated with the proposed rule for those broker-dealers who do not currently have systems in place to receive and respond to requests because they would not have to develop and deploy such systems under this alternative, as they would under the proposal. Any related initial or ongoing cost savings compared to the proposal may be minimal, as, in either case, such broker-dealers would need to develop systems to generate customer-specific reports and broker-dealers could add the customer requests to a list for individual report generation under the proposal just as they add customers to a list for automated reports under the alternative. The alternative may reduce ongoing personnel costs compared to the proposal because under the proposal, broker-dealers would have to answer emails, phone calls, or other forms of requests for ad-hoc reports. However, the brokerage industry is a relationship business and the Commission understands that broker-dealers communicate frequently with their customers, especially their larger customers. Further, the alternative may also result in additional ongoing personnel costs compared to the proposal if customers who would not have requested reports contact the broker-dealers to discuss reports they would receive automatically under the alternative. In addition, the Commission notes that, even under the proposal, broker-dealers could choose to provide reports automatically to their customers if this is more cost effective for them.

5. Submission of Institutional Order Handling Reports (Proposed Rules 606(b)(3) and 606(c))

The Commission considered an alternative to proposed Rules 606(b)(3) and 606(c) that would require the customer-specific institutional order handling reports and the public aggregated institutional order handling reports to be submitted to the Commission. While Commission staff may be able to replicate much of the information in the reports were the proposed Consolidated Audit Trail to be approved,[452] the reports would contain some information not included as data in the Consolidated Audit Trail ("CAT Data"), such as information on the use of aggressive and passive order routing strategies. In addition, the institutional order handling reports would be already assembled, making access to the reports more efficient than assembling the analogous information from CAT Data. With direct access to the reports under this alternative, Commission staff could potentially use the reports, for example, to investigate best execution concerns, assist in risk-based examination decisions, and/or conduct market analyses on order handling to promote data-driven rulemaking. These activities could, in turn, benefit investors and the market in the form of enhanced investor protection and better informed rulemaking. The alternative would also establish a central location for all reports and could reduce the burden for Commission staff to seek out and obtain the reports. Notably, under the proposal, the Commission could acquire the public aggregated institutional order handling reports as described in Rule 606(c), though not the customer-specific institutional order handling reports as described in Rule 606(b)(3), from broker-dealer Web sites. The proposal thus does not preclude the Commission from obtaining the public aggregated institutional order handling reports to achieve some of the benefits of this alternative.

While providing some benefits, this alternative would also impose additional costs to broker-dealers to submit their reports to the Commission. For example, under this alternative, broker-dealers would incur additional costs to transmit the reports directly to the Commission including any initial costs of setting up the connection to the Commission's repository, though the Commission preliminarily believes that these costs will not be significant. Further, the Commission preliminarily believes that acquiring the reports from each broker-dealer may impose burdens on Commission resources,[453] though the magnitude of those burdens is unknown. Receiving customer-specific institutional order handling reports, which include sensitive information, *e.g.*, PII or sensitive proprietary information, could impose further costs to the Commission as the Commission would need to take steps to safeguard this information, though the Commission may be able to leverage its experience dealing with the receipt of sensitive information in other contexts to minimize those costs.

6. Disaggregate Categories of NMS Stocks for Rule 606(a)

The Commission considered an alternative to current Rule 606(a) that would not require reports for retail orders be aggregated across all NMS stocks, but rather would require that those reports be divided into categories, *e.g.*, into Exchange-Traded Products ("ETPs") and all other NMS stocks, or into groups of stocks with different trading volume. The Commission considered this alternative in addition to or instead of the requirement of current Rule 606(a) to divide the reports by listing markets. This would increase the costs of producing the reports relative to the proposal, but it also would provide more information.

For example, one such alternative could require that broker-dealers separately report the routing of ETPs and the routing of non-ETP NMS stocks. The costs of producing the reports under this alternative would be higher than the costs of the proposal because such an alternative would require broker-dealers to classify NMS stocks into categories, *e.g.*, into ETPs and non-ETP stocks. There would be an initial cost for the classification of all stocks and an ongoing cost to maintain the classification.

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[452] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (File No. 4–698) (Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail), *available at https://www.sec.gov/rules/sro/nms/2016/34-77724.pdf.*

[453] The Commission recognizes that third party vendors could collect and sell the broker-dealer reports at a price that could reduce the burdens on Commission resources compared to the burdens of Commission staff directly collecting the reports from broker-dealers.

Because some ETPs trade differently than non-ETP NMS stocks, broker-dealers may route them differently. To the extent that broker-dealers vary their order routing decisions for ETP and non-ETP stocks, broker-dealer customers may benefit from the more targeted information that would be provided for each type of stock under this alternative compared to the proposed amendments to Rule 606(a). Specifically, the additional information concerning each type of stock contained in the divided reports would allow customers, broker-dealers, trading centers, and the public more generally to better evaluate and compare the order routing of retail orders for each type stock, whereas under the proposed rule information on order routing is provided for both ETPs and non-ETPs in the aggregate. While the consumers of such reports would benefit from the reports being more informative with respect to the order routing for each type of stock, broker-dealers would incur higher costs in processing the additional information provided by the reports. To use the additional information, customers, broker-dealers, trading centers, and the public more generally would have to process the additional information and incorporate it in their analyses and models when evaluating and comparing the order routing of retail orders, which could result in higher costs compared to the proposed amended Rule 606(a).

7. Disclosure of Additional Information About Institutional Order Routing and Execution

The Commission considered requiring additional information to be disclosed to customers and the public relating to institutional order routing and execution quality. The Commission considered requiring additional measures to be included in proposed Rule 606(b)(3) and proposed Rule 606(c) reports for institutional orders. For example, the Commission considered requiring that proposed Rule 606(b)(3) and proposed Rule 606(c) reports contain time to execution, or implementation shortfall, which are dimensions of execution quality. In addition, the Commission considered making the reports more detailed by requiring segmentation of the data along additional dimensions, not only on order routing strategy.

In general, transaction costs of institutional orders depend on, among other factors, stock characteristics, order characteristics, and market conditions at the time of order arrival and during order execution. The reports could be segmented by any of these factors. Examples of stock characteristics are liquidity or volatility of a stock.[454] Examples of order characteristics are order size, usually measured as relative order size in relation to average daily volume,[455] or whether an order is generated by a momentum strategy, where an customer buys a stock while the stock is increasing in price and sells a stock while the stock is falling in price. Examples of market conditions are the current liquidity in a stock, *e.g.*, measured by the most recent volume or bid-ask spread compared to historical values and the current volatility in a stock, *e.g.*, compared to historical values. Requiring any of this additional information in proposed Rule 606(b)(3) and proposed Rule 606(c) reports would increase the costs of producing the reports as well as the costs of using the reports relative to proposed Rules 606(b)(3) and 606(c), but it would also increase the information content and the usefulness of the reports relative to proposed Rules 606(b)(3) and 606(c).[456]

For some data items, the computation costs would be larger than for others. For example, computing the implementation shortfall for an order is more involved than computing the time to execution and thus would result in larger computational costs. Further, unlike the proposed amendments, implementation shortfall and time to execution could involve running calculations on data received on other systems and from others who handle orders later in their lifecycle. This may make these fields more computationally costly than those proposed. However, with the addition of other relevant information, the reports under this alternative might be more useful than the proposed reports.

In addition, determining categories by metrics such as trading volume or volatility would add complex definitions to the reports and the Commission is not aware of any natural breakpoints that would simplify the identification of appropriate thresholds to classify stocks into groups of varying trading volume or volatility. Setting thresholds at levels that do not meaningfully distinguish routing activity or execution quality would be more costly than the proposed amendments without providing greater benefits.

The Commission could later evaluate data that would be disclosed pursuant to proposed Rules 606(b)(3) and 606(c), if adopted, to inform any decision as to whether additional data items or other changes might be appropriate.

8. Institutional Order Handling Reports at the Stock Level (Proposed Rule 606(b)(3))

The Commission also considered requiring the institutional order handling information required by proposed Rule 606(b)(3) to be reported at the individual stock level rather than aggregated across stocks. This alternative would enhance transparency to customers relative to proposed Rule 606(b)(3) because the reports would be more detailed. Specifically, order handling information calculated at the stock level may be more informative than aggregated data because trading centers may not charge the same maker-taker fee for all stocks. It is possible for a given trading center to use inverted and non-inverted fees for different stocks at the same time. If this is the case, the reports as proposed by Rule 606(b)(3) could potentially mask conflicts of interest because routing decisions may be different for different stocks on the same trading center due to differing maker-taker fees across the stocks, particularly if some stocks have inverted and other stocks have non-inverted fees on the same trading center.

Because the reports would be more detailed, however, this alternative would increase the costs of producing the reports as well as the costs of using the reports relative to proposed Rule 606(b)(3). The Commission preliminarily believes that any potential increase in costs of producing the reports would be negligible because broker-dealers already process the data order-by-order and to aggregate orders by stock and venue, rather than only by venue, should not increase significantly programming costs and processing time. While the Commission preliminarily believes that the production of these voluminous reports itself may not result in significantly higher costs than for the proposed reports, the size of the reports may result in higher costs to deliver the reports to customers. For example, the report could be hundreds of pages in hard copy, which would result in costs to print and deliver the report; likewise, a broker-dealer could incur higher costs to send a report electronically, depending on the size of the file that has to be sent to customers.[457] Moreover, given the thousands of securities in existence, requiring reporting metrics be broken down at the stock level would produce voluminous reports that would be difficult and costly to process for all but the most sophisticated customers. For these reasons, the Commission is proposing to have the reports broken down by venue and aggregated across stocks.

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[454] *See, e.g.*, Zhuo Zhong, The Risk Sharing Benefit versus the Collateral Cost: The Formation of the Inter-Dealer Network in Over-the-Counter Trading, Working Paper (2014). Zhong argues that broker-dealers at the center of a dealer network are better able to work off the inventory risk earned from executing orders containing volatile stocks, which in turn will determine which broker-dealers receive orders in volatile stocks. Id.

[455] Zhong suggests that broker-dealers at the center of the dealer network are better able to work off the inventory earned from executing large orders, which in turn will determine which broker-dealers receive large orders. *See id.*

[456] The costs of this alternative would be higher than the proposed amendments because it would require that broker-dealers compute additional data items. For purposes of the PRA, the Commission estimated the costs associated with the rule as proposed. *See supra* Sections IV.D.1. and 2. The Commission does not currently have information on how extensive the programming would be for broker-dealers to adapt their systems to combine data that they may not yet combine to calculate these statistics.

9. Alternative to Three-Year Posting Period (Proposed Amendments to Rules 605(a)(2) and 606(a)(1), and Proposed Rule 606(c))

The Commission considered requiring broker-dealers and market centers to make both institutional and retail reports available for a minimum length of time less than three years or more than three years. If public reports are available for less than three years, then historical data may not be as readily available to customers and the public who are seeking to analyze past routing behavior of broker-dealers or past execution quality of market centers as it would be under the proposal of a three-year posting period. Customers and the public would either have to download the data more often or have to rely on third-party vendors who download and aggregate the data. For example, if a broker-dealer or market center posted the reports for only one quarter, customers and the public would have to download the data every quarter if they wanted access to data that is older than three months. Third-party vendors also would have to download the data with sufficient frequency to capture historical data without gaps. This would have the effect of reducing the transparency of broker-dealer routing decisions for customers placing both retail and institutional orders and of the execution quality of market centers compared to the proposal of a three-year posting period. The benefit of a shorter minimum length of time would be that any costs broker-dealers incurred associated with posting reports would be less than under the proposal of a three-year posting period. However, as discussed above, the Commission preliminarily believes these incremental costs to be small and that the cost savings associated with a shorter minimum length of time would not justify the costs of historical data potentially being less readily available to customers and the public.

If public reports are available for more than three years, the historical data would be even more readily available to customers and the public who are seeking to analyze past routing behavior of broker-dealers or past execution quality of market centers as it would be under the proposal of a three-year posting period. Customers and the public would have to download the data less frequently to have access to historical data that is older than the minimum length of time required. However, the Commission preliminarily believes that the additional benefit of a minimum length of time of more than three years would be small because three years is a meaningful time period considering the rapid changes in financial markets and customers and the public would only need to download data every three years to be able to access historical data older than three years. The Commission understands that maintaining public reports for more than three years may represent a burden and result in an additional cost to broker-dealers. However, as discussed above, the Commission preliminarily believes the additional cost to be small. Nevertheless, the Commission preliminarily believes that a minimum length of time of three years is appropriate.

10. Request for Comment

The Commission requests comment on the Commission's analysis of potential alternatives as described above and the costs and benefits associated with such alternatives. In particular, the Commission solicits comment on the following:

174. Do commenters believe that the alternatives that the Commission considered are appropriate? Do commenters believe that the analysis of the associated costs and benefits of the alternatives is accurate? If not, please provide alternative costs and benefits, including any data or statistics that supports those costs and benefits.

175. Are there other alternatives that the Commission should consider? If so, please provide additional alternatives and how their costs and benefits would compare to the proposal.

176. Do commenters believe the reports for retail orders should contain information required by proposed Rule 606(b)(3) for institutional orders that is not currently required by Rules 606(a)(1) and 606(b)(1) for retail orders? Why or why not? If yes, what additional information should be required? Please be specific in your response.

177. Do commenters believe the Commission should require that the reports for institutional orders required by proposed Rule 606(b)(3) include information about payment for order flow and payment from profit-sharing relationships as would be required by proposed Rule 606(a)(1)(iii) for retail orders? Why or why not? Similarly, do commenters believe the Commission should require that the reports for institutional orders required by proposed Rule 606(b)(3) include a discussion of the material aspects of the broker-dealer's relationship with each venue as would be required by amended Rule 606(a)(1)(iv) for retail orders? Why or why not? Please be specific in your response.

178. Do commenters have information on the costs and benefits of any of these alternatives? If so, please provide any data or statistics to support the estimates.

E. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts.[458] Specifically, Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[459] Furthermore, Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[460] We consider these effects below.

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[457] For example, there typically are limitation to the size of files that can be sent through email.

[458] 15 U.S.C. 78c(f).

[459] *Id.*

[460] 15 U.S.C. 78w(a)(2).

1. Effects of Proposed Amendments on Efficiency and Competition

a. Proposed Amendments to Disclosures for Retail Orders

As a result of the proposed amendments to Rule 606(a)(1), broker-dealers that route retail orders would be required to make public enhanced aggregated reports detailing retail order routing practices and information regarding marketable and non-marketable limit orders in addition to information on payment for order flow arrangements, payment from any profit-sharing relationship received, and transaction fees paid and rebates received per share and in aggregate for such orders. *In addition, the proposed amendments would require* those reports to be made available using an XML schema and associated PDF renderer on the Commission's Web site and to be maintained *on an Internet Web site that is free and readily accessible to the public for a period of three years.*[461] As explained in detail below, the Commission preliminarily believes that these enhanced disclosures, which require broker-dealers to describe any terms of payment for order flow arrangements and profit-sharing relationships with Specified Venues that may influence their order routing decisions for retail orders, should promote competition and enhance efficiency.

First, per the discussion above, the additional information required by the amendments relative to the information required by current Rule 606(a)(1) would allow customers to better assess the order routing and execution quality provided by their broker-dealers,[462] which, in turn, would enable the customers to more efficiently evaluate and select broker-dealers.[463] The proposed amendments to Rule 606(a) would require broker-dealers, for retail orders, to differentiate between marketable and non-marketable limit orders and to publicly report the net aggregate amount of any payment for order flow, payment from any profit-sharing relationship received, the transaction fees paid, and transaction rebates received, both as a total dollar amount and on a per share basis, for each of the following order types: market orders, marketable limit order, non-marketable limit orders, and other orders. As discussed in Sections V.C.2.a. and V.C.2.b., the Commission preliminarily believes that this would allow customers and the public to better understand the potential conflicts of interest broker-dealers may face when routing retail orders and to assess if and how well broker-dealers manage these potential conflicts of interest. This would enable customers to make a more informed decision as to which broker-dealers to use for retail orders. The Commission preliminarily believes that this would enhance the competition for retail order flow between broker-dealers, which might result in better execution quality for customers. In addition, if broker-dealers change their routing behavior in response to the public reports required by proposed Rule 606(a)(1), the Commission preliminarily believes that competition between trading centers might be enhanced as trading centers could better compete for retail order flow, which might result in better execution quality for retail orders and innovation by existing or new trading centers. As discussed in Section V.C.1.c.i, one way a trading center can attract order flow is through innovation thereby differentiating itself from other trading centers.

Further, to the extent that the proposed amendments to Rule 606(a) lead to better execution quality provided by broker-dealers and trading centers, the Commission preliminarily believes that the proposed amendments would lead to lower transaction costs for customers. Because transaction costs can be viewed as a measure for efficiency in the trading process, lower transaction costs would indicate enhanced efficiency in the trading process. In addition, to the extent that the proposed amendments to Rule 606(a) make the trading process more efficient by lowering trading costs, the Commission preliminarily believes the proposed amendments would reduce market friction and therefore have a positive effect on the efficiency of prices.

As discussed above, however, the proposed amendments to Rule 606(a)(1) could result in costs that may have an effect on efficiency and competition. For example, the proposed amendments would impose certain costs on broker-dealers who currently route retail orders, as well as on broker-dealers who would like to start routing retail orders and will also have to comply with the proposed amendments to Rule 606(a)(1). To the extent that the costs for a broker-dealer entering the market for retail orders are higher under the proposed amended Rule 606(a)(1) than under the current Rule 606(a)(1), these higher costs could lead to a higher barrier to entry and thereby reduce competition. However, the Commission preliminarily believes that any difference in costs under the proposed amended Rule 606(a)(1) and the current Rule 606(a)(1) to be relatively small as to not alone deter broker-dealers from entering the market for retail brokerage.

Under the proposed amendments to Rule 606, the broker-dealer may be concerned about the perception of acting on a conflict of interest. As a result, a broker-dealer may be incentivized to route fewer non-marketable limit orders to the trading center offering the highest rebate, even if this affects execution quality, in an effort to ensure that a customer does not misconstrue the intent behind the broker-dealer's routing decisions. Such a potential outcome could reduce to some degree the intensity of competition between broker-dealers on the dimension of execution quality. However, the Commission preliminarily believes that such a scenario is not likely as customers are likely to review the 606 reports in conjunction with execution quality statistics currently required pursuant to Rule 605 and can discuss with their broker-dealers the order routing and execution quality the broker-dealer provides.

b. Proposed Rules for Disclosures for Institutional Orders

For institutional orders, proposed Rules 606(b)(3) and (c) would require broker-dealers that route institutional orders to provide detailed reports to customers who submit such orders upon the request of the customer, and to make public on a quarterly basis broken down by calendar month, a report that aggregates the information. In addition, these proposed rules would require reports on institutional orders to be made available using an XML schema and associated PDF renderer to be published on the Commission's Web site and to be maintained for a period of three years. As discussed below, the Commission preliminarily believes that these disclosures of order routing decisions by broker-dealers for institutional orders could promote competition and enhance efficiency.

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[461] Consistent with the proposed amendments to Rule 606, the Commission is proposing to amend Rule 605(a)(2) to require market centers to keep public execution reports required by the rule posted on an Internet Web site that is free of charge and readily accessible to the public for a period of three years from the initial date of posting. The Commission preliminarily believes that making past order execution information available to customers and the public generally will be useful to those seeking to analyze historical order execution information from different market centers. The proposed requirement to keep public execution reports required by Rule 605 for a period of three years is expected to make it easier, and thus more efficient, for the public to collect historical data for analysis. The Commission preliminarily believes the proposed requirement could enhance efficiency in the data collection process of those seeking to retrieve and analyze historical order execution information from different market centers.

[462] *See supra* Section V.C.2.

[463] The proposed amendments to Rule 606(a)(1) which would no longer require reports be divided into separate sections for stocks listed on different exchanges may be an exception to this. As discussed below, to the extent that order routing decisions may differ for stocks that are listed on different exchanges, the reports that aggregate the data as required by the proposed amendments to Rule 606(a)(1) may provide less information to retail customers and the public and therefore may reduce the efficiency with which customers and the public are able to evaluate and select broker-dealers based on the order routing and execution quality they provide.

First, the disclosures required by the proposal, both on an individualized and aggregated basis, would inform customers as to the institutional order routing practices of and the execution quality provided by a particular broker-dealer, as described in further detail above. As a result, customers would be able to use that information to compare the institutional order routing and execution quality of their broker-dealers based on the institutional orders submitted to those broker-dealers as reported in the customer-specific reports required by proposed Rule 606(b)(3). In addition, a customer placing institutional orders would be able to compare the order routing practices and execution quality of each broker-dealer based on the public aggregated institutional order handling reports required under proposed Rule 606(c), independent of whether the customer submits orders to a specific broker-dealer. Further, a customer would be able to compare the order routing and execution quality of its institutional orders submitted to a specific broker-dealer as reflected in the customer-specific reports required by proposed Rule 606(b)(3) to the order routing and execution quality of all orders that the broker-dealer handled contained in the public aggregated institutional order handling reports required by proposed Rule 606(c).

These enhanced disclosures would better enable customers to analyze institutional order routing and execution quality provided by broker-dealers, which would allow customers to more efficiently monitor, evaluate, and select broker-dealers. In addition, customers and broker-dealers would be able to evaluate execution quality of institutional orders on different trading centers more efficiently.[464] Customers also would be better informed as to the institutional order routing and execution quality they received from a particular broker-dealer. If a customer feels it received poor order routing and execution quality from a particular broker-dealer, the customer could initiate a dialogue with the broker-dealer for an explanation, which may lead to better order routing decisions and execution quality by the broker-dealer. The customer may also decide to use different broker-dealers in order to seek better order routing and execution quality. This could enhance competition between broker-dealers.

Further, the Commission preliminarily believes that proposed Rules 606(b)(3) and (c) might enhance competition between trading centers. First, if broker-dealers change their routing decisions in response to the reports required by proposed Rules 606(b)(3) and (c), trading centers would have an additional incentive to compete for institutional order flow. Second, the reports required by proposed Rules 606(b)(3) and (c) are structured by trading center, so that the execution quality at each trading center would be clearly visible. This may lead broker-dealers to change their routing behavior, but also, more directly, trading centers could compare the execution quality of all trading centers, which may again lead to enhanced competition among trading centers. The Commission preliminarily believes that the enhanced competition between trading centers could lead to innovation by existing and new trading centers, resulting in better execution quality for customers placing institutional orders. As discussed in Section V.D.1.a if a trading center were to lose order flow to other trading centers due to lower execution quality it would have the incentive to innovate to improve its execution quality.

To the extent that proposed Rules 606(b)(3) and (c) lead to better execution quality being provided by broker-dealers and trading centers, the Commission preliminarily believes that the proposed amendments might lead to lower transaction costs for institutional orders. As discussed above, lower transaction costs indicate enhanced efficiency in the trading process and the Commission preliminarily believes as a result, the proposed rules would reduce market friction and therefore have a positive effect on the efficiency of prices.

In addition, the Commission preliminarily believes that the requirement of standardized customer-specific and standardized public aggregated institutional order handling reports in proposed Rules 606(b)(3) and (c) would enhance efficiency for customers and the public in processing the information contained in the reports, as compared to the ad-hoc reports customers may currently receive from their broker-dealers.[465] Because the data will be presented in a standardized format, customers and the public would be able to more efficiently aggregate, compare, and analyze the data, as opposed to reconciling dissimilar formats, which may not always be possible, before trying to aggregate, compare, and analyze the data.

In addition, as discussed above, the Commission understands that many broker-dealers that handle institutional orders currently voluntarily provide reports to institutional customers upon request. However, the Commission understands that how willing a broker-dealer is to provide such reports and how detailed the reports are might depend on the size of an institutional customer. To that extent, larger institutional customers have an advantage over smaller institutional customers. Proposed Rules 606(b)(3) and (c) would provide access to reports on institutional order handling to all institutional customers, regardless of their size.

The Commission notes that, even without the proposed rule amendments, institutional customers can still request customized reports from their broker-dealers and broker-dealers would have an incentive to provide such reports in order to attract institutional order flow. As is currently the case, broker-dealers might be more willing to provide such customized reports to larger institutional customers and the customized reports might provide more detailed information for larger institutional customers. While the Commission preliminarily believes that proposed Rules 606(b)(3) and (c) mitigate the advantage of larger institutional customers in that respect, the Commission preliminarily believes that larger institutional customers are likely to continue to have an advantage over smaller institutional customers to the extent that they are able to obtain customized reports more easily and that those customized reports contain information not contained in the reports required by proposed Rules 606(b)(3) and (c). The Commission preliminarily believes that by reducing the informational advantage of larger institutional customers over smaller institutional customers, proposed Rules 606(b)(3) and (c) would improve fairness between institutional customers. Smaller institutional customers would be able to evaluate and select their broker-dealers with efficiency more similar to larger institutional customers, thereby increasing the efficiency of their investment process. The Commission preliminarily believes that this would provide smaller institutional customers with information to select the broker-dealers that promote better execution quality, to the benefit of their investors.

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[464] *See supra* Section V.C.1.

[465] *See supra* Section V.B.1. for a discussion of the ad-hoc reports and *supra* Section V.C.4. for a discussion of the standardization and format for the reports required by proposed Rules 606(b)(3) and (c).

As discussed above, however, proposed Rules 606(b)(3) and (c) could result in certain costs to broker-dealers who currently route institutional orders, as well as those who would like to start routing institutional orders and thus would have to comply with proposed Rules 606(b)(3) and (c). These costs could lead to a higher barrier to entry and thereby reduce competition. However, the Commission preliminarily believes that the costs associated with proposed Rules 606(b)(3) and (c) are not large enough to meaningfully affect the barriers to entry and the level of competition due to potential new entrants into the market for institutional orders. In addition, the Commission preliminarily believes that any negative effect on competition due to heightened barriers to entry are justified by the expected positive effect on competition of the disclosures required by proposed Rules 606(b)(3) and (c).

In addition, the proposed amendments may cause broker-dealers to change how they handle institutional orders. Given that broker-dealers would be aware of the metrics to be used a priori, they may handle institutional orders in a manner that promotes a positive reflection on their respective services but customers could erroneously view a broker-dealer's handling as suboptimal.[466] Any changes to broker-dealers' order routing decisions due to proposed Rule 606(b)(3) may well be to the benefit of customers placing institutional orders, but if broker-dealers and customers focus exclusively on the metrics in the reports required by proposed Rule 606(b)(3), the order routing decisions could also be viewed as suboptimal for the customers. Customers' preferences could, therefore, be skewed toward the metrics as opposed to their true objectives, which could skew broker-dealer incentives, potentially limiting the efficiency and competition benefits of the proposed amendments.

For example, suppose a broker-dealer routes institutional orders so that the orders execute at lower cost with a higher fill rate, shorter duration, and more price improvement than the broker-dealer's competitors. However, it could be the case that, in order to achieve these objectives, the broker-dealer routes the majority of non-marketable limit order shares to the trading center offering the highest rebate. An institutional customer that reviews the proposed order handling reports might suspect that the broker-dealer acted in its self-interest by selecting the highest rebate venue in order to maximize rebates when in fact, the broker-dealer made the decision based on factors that might not be completely reflected in the proposed reports.[467]

2. Effects of Proposed Amendments on Capital Formation

The Commission preliminarily believes that the proposed amendments to Rules 600, 605, and 606 might have positive effects on capital formation, but the Commission notes that predicting the magnitude of such effects is difficult as the effects likely would be indirect rather than directly resulting from the proposed amendments.

As discussed, the Commission preliminarily believes the proposed amendments to Rules 600, 605, and 606 would enhance competition among broker-dealers and trading centers resulting in better execution quality for customers that place retail and institutional orders and to the extent that better execution quality would lead to lower friction in the trading process, the proposed amendments would increase market efficiency in both the trading process and asset pricing. This could lead to more efficient asset allocation because better execution quality and greater market efficiency leads to more efficient investment decisions by customers that place retail and institutional orders.[468] For example, lower transaction costs could allow customers to rebalance their portfolios more frequently and more efficiently and at more efficient prices that better reflect the true underlying value. More efficient asset allocation could have a positive impact on capital formation as capital is allocated to firms with the most profitable projects, which ultimately would allow these firms to raise capital more easily.[469]

In addition, there is a relation between liquidity of an asset and the required rate of return for that asset.[470] The less liquid an asset is, *e.g.,* the higher transaction costs are to buy or sell it, the higher rate of return customers could demand as compensation. For example, lower transaction costs for stocks could result in lower required rates of return for stocks. This in turn could lead to lower cost of capital for the firms, which could have a positive impact on capital formation because it would allow firms to raise capital at more favorable conditions.

3. Request for Comment

In sum, the Commission preliminarily believes that as a result of the disclosures required by the proposal bringing competitive forces to bear on the market, the proposed amendments should enhance competition among broker-dealers as well as trading centers to provide customers placing both retail and institutional orders with enhanced quality of execution. The Commission preliminarily believes that this enhanced quality of execution should promote efficiency in the trading process as well as pricing, which should also have a positive impact on capital formation.

The Commission requests comment on its analysis of the proposal's economic effects and effects on efficiency, competition, and capital formation. In particular, the Commission solicits comment on the following:

179. Do commenters believe that the Commission's analysis of the potential economic effects of the proposal, including potential effects on efficiency, competition, and capital formation is accurate? Why or why not? Please provide analysis and empirical data to support your views.

180. Are there other effects of the proposal that the Commission should consider? If so, please explain and provide support for your views.

181. Do commenters believe there are alternative mechanisms for achieving the Commission's goal of enhancing transparency for order routing practices while promoting efficiency, competition and capital formation? If so, what would be the potential impacts on promotion of efficiency, competition, and capital formation? For example, what would be the effect of requiring broker-dealers to provide the public reports for retail orders, on a monthly basis, rather than

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[466] The Commission preliminarily believes that the set of metrics provide customers with the most cost effective view of broker-dealer order handling practices, but recognizes a risk that the information from the disclosures may not perfectly align routing practices and execution quality.

[467] *Id.*

[468] More efficient investment decisions means investing in the securities with the expected risk and return that better fit the customer's investment objectives.

[469] *See supra* Section V.B.8. for a discussion of how asset allocation can relate to capital formation.

[470] *See* Yakov Amihud and Haim Mendelson, *Asset Pricing and the Bid-Ask Spread,* 17 Journal of Financial Economics 223 (December 1986).

quarterly? What would be the effect of requiring broker-dealers to provide the public quarterly reports for retail orders, proposed in Rule 606(a), broken down into exchange-traded products (ETP) and non-ETP NMS stocks? Would the effects be the same for institutional orders under proposed Rules 606(b) and 606(c)? Please explain and provide support for your arguments.

182. Do commenters believe that market participants would change their behavior in response to the proposal? If so, which market participants and how? What would be the costs and benefits of these changes? How would such changes affect efficiency, competition, and capital formation? Would these changes affect market quality and market efficiency? Please explain.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[471] the Commission requests comment on the potential effect of the proposed amendments on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA")[472] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[473] of the Administrative Procedure Act,[474] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[475] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have significant economic impact on a substantial number of small entities.

For purposes of the Commission rulemaking in connection with the RFA[476] as it relates to broker-dealers, a small entity includes a broker-dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[477] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[478]

Based on the Commission's analysis of existing information relating to broker-dealers that would be subject to the proposed amendments to Rule 606, the Commission preliminarily believes that such broker-dealers do not fall within the definition of "small entity," as defined above.[479] Further, the proposed amendments to Rule 605 to require reports to remain posted on an Internet Web site for a specified period of time will not have a significant impact on small entities affected by the proposed Rule.[480] For the foregoing reasons, the Commission certifies that the proposed amendments to Rules 600, 605, and 606 would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.

The Commission requests comment regarding this certification. In particular, the Commission solicits comment on the following:

183. Do commenters agree with the Commission's certification? If not, please describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VIII. Statutory Authority and Text of the Proposed Rule Amendments

Pursuant to the Exchange Act, and particularly Sections 3(b), 5, 6, 11A, 15, 17, and 23(a) thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, and 78w(a), the Commission proposes to amend Sections 240.3a51–1, 240.13h–1, 242.105, 242.201, 242.204, 242.600, 242.602, 242.605, 242.606, 242.607, 242.611, and 242.1000 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects

17 CFR Part 240

Brokers, Dealers, Registration, Securities.

17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78–q1, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376, (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

§ 240.3a51–1 [Amended]

■ 2. Section 240.3a51–1, paragraph (a) introductory text, is amended by removing the text "§ 242.600(b)(47)" and adding in its place "§ 242.600(b)(49)".

§ 240.13h–1 [Amended]

■ 3. Section 240.13h–1, paragraph (a)(5), is amended by removing the text "Section 242.600(b)(46)" and adding in its place "§ 242.600(b)(48)".

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 4. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a23, 80a–29, and 80a–37.

§ 240.105 [Amended]

■ 5. Section 242.105 is amended by:

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[471] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[472] 5 U.S.C. 601 *et seq.*

[473] 5 U.S.C. 603(a).

[474] 5 U.S.C. 551 *et seq.*

[475] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[476] *See id.*

[477] 17 CFR 240.17a–5(d).

[478] *See* 17 CFR 240.0–10(c).

[479] The Commission considered FOCUS Report data in making this determination.

[480] *See supra* Section IV.D.5.

■ a. In paragraph (b)(1)(i)(C), removing the text "§ 242.600(b)(22)" and adding in its place "§ 242.600(b)(23)".

■ b. In paragraph (b)(1)(ii), removing the text "§ 242.600(b)(64)" and adding in its place "§ 242.600(b)(69)".

§ 240.201 [Amended]

■ 6. Section 242.201 is amended by:

■ a. In paragraph (a)(1), removing the text "§ 242.600(b)(47)" and adding in its place "§ 242.600(b)(49)".

■ b. In paragraph (a)(2), removing the text "§ 242.600(b)(22)" and adding in its place "§ 242.600(b)(23)".

■ c. In paragraph (a)(4), removing the text "§ 242.600(b)(42)" and adding in its place "§ 242.600(b)(44)".

■ d. In paragraph (a)(5), removing the text "§ 242.600(b)(49)" and adding in its place "§ 242.600(b)(52)".

■ e. In paragraph (a)(6), removing the text "§ 242.600(b)(55)" and adding in its place "§ 242.600(b)(60)".

■ f. In paragraph (a)(7), removing the text "§ 242.600(b)(64)" and adding in its place "§ 242.600(b)(69)".

■ g. In paragraph (a)(9), removing the text "§ 242.600(b)(78)" and adding in its place "§ 242.600(b)(83)".

§ 240.204 [Amended]

■ 7. Section 242.204, paragraph (g)(2), is amended by removing the text "Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(b)(64)" and adding in its place "§ 600(b)(69) of Regulation NMS (17 CFR 242.600(b)(69)".

■ 8. Section 242.600 is amended by:

■ a. Redesignating paragraphs (b)(52) through (83) as (b)(57) through (88);

■ b. Adding new paragraphs (b)(55) and (56);

■ c. Redesignating paragraphs (b)(49) through (51) as (b)(52) through (54);

■ d. Adding new paragraph (b)(51);

■ e. Redesignating paragraphs (b)(30) through (48) as (b)(32) through (50);

■ f. Amending newly redesignated paragraph (b)(50) by removing the word "customer" and adding in its place "retail";

■ g. Adding new paragraph (b)(31);

■ h. Redesignating paragraphs (b)(1) through (b)(29) as (b)(2) through (b)(30);

■ i. Adding new paragraph (b)(1).

■ j. Amending newly redesignated paragraph (b)(19) by removing the word "*Customer*" and adding in its place "*Retail*";

■ k. Amending newly redesignated paragraph (b)(20) by removing the word "customer" and adding in its place "retail";

■ l. Amending newly redesignated paragraph (b)(24)(ii) by removing the word "customer" and adding in its place "retail";

The additions read as follows:

§ 242.600 NMS security designation and definitions.

* * * * *

(b) * * *

(1) *Actionable indication of interest* means any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest:

(i) Symbol;

(ii) Side (buy or sell);

(iii) A price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and

(iv) A size that is at least equal to one round lot.

* * * * *

(31) *Institutional order* means an order to buy or sell an NMS stock that is not for the account of a broker or dealer and is an order for a quantity of an NMS stock having a market value of at least $200,000.

* * * * *

(51) *Non-marketable limit order* means any limit order other than a marketable limit order.

* * * * *

(55) *Orders providing liquidity* means orders that were executed against after resting at a trading center.

(56) *Orders removing liquidity* means orders that executed against resting trading interest at a trading center.

* * * * *

§ 242.602 [Amended]

■ 9. Section 242.602 is amended by:

■ a. In paragraph (a)(5)(i) removing the text "§ 242.600(b)(73)" and adding in its place "§ 242.600(b)(78)".

■ b. In paragraph (a)(5)(ii) removing the text "§ 242.600(b)(73)" and adding in its place "§ 242.600(b)(78)".

■ 10. Section 242.605 is amended by:

■ a. Revising the introductory text designated as a Preliminary Note; and

■ b. Adding a sentence at the end of paragraph (a)(2).

The addition reads as follows:

§ 242.605 Disclosure of order execution information.

This section requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for retail orders.

(a) * * *

(2) * * * Every market center shall keep such reports posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

* * * * *

■ 11. Section 242.606 is revised to read as follows:

§ 242.606 Disclosure of order routing information.

(a) *Quarterly report on retail order routing.* (1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS securities during that quarter broken down by calendar month and keep such report posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site. Such report shall include a section for NMS stocks and a separate section for NMS securities that are option contracts. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site for all reports required by this section. Each section in a report shall include the following information:

(i) The percentage of total retail orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, marketable limit orders, non-marketable limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed marketable limit orders, total non-directed non-marketable limit orders, and total non-directed other orders for the section that were routed to the venue;

(iii) For each venue identified pursuant to paragraph (a)(1)(ii) of this section, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for each of the following non-directed order types:

(A) Market orders;

(B) Marketable limit orders;

(C) Non-marketable limit orders; and

(D) Other orders.

(iv) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (a)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker's or dealer's order routing decision including, among other things:

(A) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;

(B) Disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;

(C) Volume-based tiered payment schedules; and

(D) Agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

(2) A broker or dealer shall make the report required by paragraph (a)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(b) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's retail orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. Such disclosure shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site for all reports required by this section.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (b)(1) of this section.

(3) Every broker or dealer shall, on request of a customer that places, directly or indirectly, an institutional order with the broker or dealer, disclose to such customer within seven business days of receiving the request, a report on its handling of institutional orders for that customer for the prior six months by calendar month. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site for all reports required by this section. For purposes of such report, the handling of an institutional order includes the handling of all smaller orders derived from the institutional order. Such report shall include, with respect to the order flow sent by the customer to the broker or dealer, the total number of shares of institutional orders sent to the broker or dealer by the customer during the relevant period; the total number of shares executed by the broker or dealer as principal for its own account; the total number of institutional orders exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which institutional orders were exposed by the broker or dealer through an actionable indication of interest. Such report also shall include the following columns of information for each venue to which the broker or dealer routed institutional orders for the customer, in the aggregate and broken down by passive, neutral, and aggressive order routing strategies as defined in paragraph (b)(3)(v) of this section:

(i) *Information on Order Routing.* (A) Total shares routed;

(B) Total shares routed marked immediate or cancel;

(C) Total shares routed that were further routable; and

(D) Average order size routed.

(ii) *Information on Order Execution.* (A) Total shares executed;

(B) Fill rate (shares executed divided by the shares routed);

(C) Average fill size;

(D) Average net execution fee or rebate (cents per 100 shares, specified to four decimal places);

(E) Total number of shares executed at the midpoint;

(F) Percentage of shares executed at the midpoint;

(G) Total number of shares executed that were priced on the side of the spread more favorable to the institutional order;

(H) Percentage of total shares executed that were priced at the side of the spread more favorable to the institutional order;

(I) Total number of shares executed that were priced on the side of the spread less favorable to the institutional order; and

(J) Percentage of total shares executed that were priced on the side of the spread less favorable to the institutional order.

(iii) *Information on Orders that Provided Liquidity.* (A) Total number of shares executed of orders providing liquidity;

(B) Percentage of shares executed of orders providing liquidity;

(C) Average time between order entry and execution or cancellation, for orders providing liquidity (in milliseconds); and

(D) Average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).

(iv) *Information on Orders that Removed Liquidity.*(A) Total number of shares executed of orders removing liquidity;

(B) Percentage of shares executed of orders removing liquidity; and

(C) Average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).

(v) For the purposes of paragraph (b)(3) of this section:

(A) A *passive order routing strategy* is one that emphasizes the minimization of price impact over the speed of execution of the entire institutional order;

(B) A *neutral order routing strategy* is one that is relatively neutral between minimization of price impact and the speed of execution of the entire institutional order; and

(C) An *aggressive order routing strategy* is one that emphasizes the speed of execution of the entire institutional order over minimization of price impact.

The broker or dealer shall assign each order routing strategy that it uses for institutional orders to one of these three categories in a consistent manner for each report it prepares pursuant to paragraph (b)(3) of this section, promptly update the assignments any time an existing strategy is amended or a new strategy is created that would change such assignment, and document the specific methodologies it relies upon for making such assignments. Every broker or dealer shall preserve a copy of the methodologies used to assign its order routing strategies and maintain such copy as part of its books and records in a manner consistent with § 240.17a–4(b) of this chapter.

(c) *Quarterly report on institutional order handling.* A broker or dealer that receives institutional orders shall make publicly available a report that aggregates the information required by paragraph (b)(3) of this section, whether or not requested by a customer, on its handling of all institutional orders for all customers for each calendar quarter by calendar month within one month after the end of the quarter. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's Web site for all reports required by this section. Every broker or dealer shall keep such report posted on an Internet Web site that is free and readily accessible to the public for a period of three years from the initial date of posting on the Internet Web site.

(d) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 240.607 [Amended]

■ 12. Section 242.607 is amended by:

■ a. In paragraph (a)(1) removing the words "customers' orders" and add in its place "customers' retail orders" and removing the word "customer" and add in its place "retail".

■ b. In paragraph (a)(2) removing the word "customer" and add in its place "retail".

§ 240.611 [Amended]

■ 13. Section 242.611, paragraph (c) is amended by removing the text "§ 242.600(b)(30)" and adding in its place "§ 242.600(b)(32)".

§ 240.1000 [Amended]

■ 14. In Section 242.1000 amend the definition of *Plan processor* by removing the text "§ 242.600(b)(55)" and adding in its place "§ 242.600(b)(60)".

By the Commission.

Dated: July 13, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16967 Filed 7–26–16; 8:45 am]

BILLING CODE 8011–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 144 July 27, 2016

Part IV

The President

Executive Order 13733—Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Facilitation and Trade Enforcement Act of 2015

Federal Register
Vol. 81, No. 144
Wednesday, July 27, 2016

Presidential Documents

Title 3—

The President

Executive Order 13733 of July 22, 2016

Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Facilitation and Trade Enforcement Act of 2015

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trade Facilitation and Trade Enforcement Act of 2015 (the "Act") (Public Law 114–125) and section 301 of title 3, United States Code, I hereby order as follows:

Section 1. *Authorities and Functions under the Act.* (a) The functions of the President under section 2313A(b) of the Export Enhancement Act of 1988, as added by section 504 of the Act, are assigned to the Secretary of Commerce. In carrying out its functions, the State and Federal Export Promotion Coordination Working Group established by the Secretary of Commerce under this section shall also coordinate with local and municipal governments representing regionally diverse areas.

(b) The functions of the President under section 909(d) of the Act are assigned to the Secretary of State, in consultation with other relevant Federal agencies.

(c) The functions of the President under section 915(d) of the Act are assigned to the Administrator of the United States Agency for International Development, in consultation with the Secretary of State and the United States Trade Representative (U.S. Trade Representative).

(d) The functions of the President under section 915(e) of the Act are assigned to the U.S. Trade Representative, in consultation with the Secretary of State.

Sec. 2. *Engagement on Currency Exchange Rate and Economic Policies.* (a) Prior to undertaking an enhanced analysis of a country pursuant to section 701(a)(2)(A)(ii) of the Act, the Secretary of the Treasury shall seek the views of the U.S. Trade Representative on changes in trade restrictions in that country.

(b) In exercising the functions under section 701(b)(2)(A) of the Act, the Secretary of the Treasury shall consult with the Secretary of State in making any determination that commencing enhanced bilateral engagement with a country would cause serious harm to the national security of the United States.

(c) If the Secretary of the Treasury determines, pursuant to section 701(c)(1) of the Act, that a country has failed to adopt appropriate policies to correct the undervaluation and surpluses described in section 701(b)(1)(A) of the Act with respect to that country, the Assistant to the President for Economic Policy, in consultation with the Secretary of the Treasury, the U.S. Trade Representative, the Secretary of State, and the Secretary of Commerce, shall make a recommendation to the President regarding which of the actions set forth in sections 701(c)(1)(A) through (D) of the Act the President should take, or whether the President should waive, pursuant to section 701(c)(2) of the Act, the requirement to take remedial action.

Sec. 3. *General Provisions.* (a) In exercising authority delegated by or performing functions assigned in this order, the Secretaries of State, the Treasury, and Commerce and the U.S. Trade Representative and their delegees:

(i) shall ensure that all actions taken by them are consistent with the President's constitutional authority to (A) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations; (B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; (C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and (D) supervise the executive branch; and

(ii) may redelegate authority delegated by this order and may further assign functions assigned by this order to officers of any other department or agency within the executive branch to the extent permitted by law, including section 301 of title 3, United States Code, and such redelegation or further assignment shall be published in the *Federal Register*.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
July 22, 2016.

[FR Doc. 2016–17945
Filed 7–26–16; 11:15 am]
Billing code 3295–F6–P

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